

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 2nd February, 2016, 10.00 am

Councillors: Paul Myers (Chair), Caroline Roberts and Mark Shelford

Officers in attendance: Alan Bartlett (Public Protection Team Leader), John Dowding (Senior Public Protection Officer), Terrill Wolyn (Senior Public Protection Officer) and Shaine Lewis (Principal Solicitor and Deputy Monitoring Officer)

112 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

113 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

114 DECLARATIONS OF INTEREST

There were none.

115 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

116 MINUTES: 5TH JANUARY 2016

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

117 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for agenda items 8 and 9.

118 EXCLUSION OF PUBLIC

RESOLVED that, the Sub-Committee having been satisfied that the public interest would be better served by not disclosing relevant information and in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for agenda items 8 and 9 and the reporting of these items be prevented under Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraph 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

119 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR LH

Mr LH confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. He said that a DBS check had revealed that Mr LH had previous convictions. He provided Members with copies of the DBS certificate, a statement from him and references given on his behalf. The Sub-Committee adjourned to allow Members time to read these documents.

After the Sub-Committee reconvened, Mr LH stated his case and was questioned by Members. Mr LH made a closing statement.

After a further adjournment, the Sub-Committee resolved to grant Mr LH a combined Hackney Carriage/Private Hire Driver's Licence.

Reasons

Members determined an application for a combined Hackney Carriage/Private Hire Driver's Licence. 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.

In making a determination Members took account of the applicant's oral representations, his statement, references and balanced these against the information contained in the Disclosure and Barring Service report.

The applicant stated that he has worked in a position of trust for 10 years and is looking to change career to do something more rewarding. He stated the incidents happened a long time ago and he had learnt many personal skills in the time since then.

Members noted that the offending occurred many years ago and he had moved on with his life. Accordingly Members find him a fit and proper person to hold a combined Hackney Carriage/Private Hire drivers licence.

120 CONSIDERATION OF CAUTION OBTAINED: MR DRJ

Mr DRJ confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. He provided Members with copies of a police caution and a witness statement from Mr DRJ. The meeting was adjourned to allow Members time to study these documents.

Mr DRJ stated his case and was questioned by Members. He made a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** that Mr DRJ continued to be fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence. They did, however, give him a stern warning about this future conduct.

Reasons

Members determined what action to take against the holder of a combined Hackney Carriage/Private Hire Driver's Licence who obtained a conditional caution during the course of his licence. 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 took account of the applicant's oral representations and the information provided with the conditional caution when deciding whether the licensee continued to be a fit and proper person to hold a licence. In doing so Members took account of all the circumstances including his driving history and character but not his economic wellbeing as this is irrelevant as it is the protection of the public that is of the utmost importance.

The licensee stated he regretted the impact his behaviour had had on the community and that his behaviour had changed as a result of the course he had attended.

Members took a dim view of the offending behaviour more especially so because it took place in a licensed vehicle. Members, however, accepted that he had learned his lesson and now recognised the effect this behaviour was having on the community and could have on his family and his ability to continue to act as a licensed driver.

In the circumstances Members find the licensee fit and proper to continue to hold a combined Hackney Carriage/Private Hire driver's licence and warn him as to his future conduct.

121 LICENSING ACT PROCEDURE

The Chair explained the procedure to be followed for the next agenda item.

122 APPLICATION TO VARY THE PREMISES LICENCE FOR SUBWAY, 31 SOUTHGATE STREET, BATH BA1 1TP

Applicant: Subway Store Development Ltd represented by Michael Parrott (Gregg Latchams Ltd), Sue Pasco (Director/Franchisee) and Stuart House (Franchise & Development Administrator)

Other Persons: Bryan Hussey, Daniel Byrd and Emily Luff

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

The Senior Public Protection Officer summarised the report. She explained that the applicant was seeking authorisation to provide late night refreshment from 23:00-03:00 on Thursdays and to extend the existing terminal hour for late night refreshment from 00:00 to 03:00 on Fridays and Saturdays. The applicant was also proposing additional conditions as set out in their operating schedule. Representations had been received in relation to the licensing objective of the prevention of public nuisance. Additional information from the applicant and the other persons had been received since the completion of the report and had been circulated to Members and the parties.

Mr Parrott stated the case for the applicant. Sue Pasco, the Director and Franchisee, said that she and her husband had a franchise which operates 25 Subway premises in the Bath and Bristol area. He invited the Sub-Committee to focus on the potential impact on the licensing objectives of the provision of hot food and drinks between 00:00 and 03:00 on Thursdays, Fridays and Saturdays. The premises were already open and serving cold food during these times, so the issue was what the impact on the licensing objectives would be of Subway being allowed to use a toaster and a kettle for an additional three hours on Thursdays and an additional two hours on Fridays and Saturdays

He drew attention to the sales projections attached to his email to Licensing of 26 January, which were based on the experience of the Bath premises after the licence had been varied to allow late night refreshment till 00:00, and on the experience of the Bristol Queens Road premises after a successful appeal against a decision of the licensing authority in Bristol. There had been a small increase in the number of sales made. He submitted that the increase in sales, if the application were granted, would be "reasonably modest" and the impact on the licensing objectives small or non-existent. The majority of sales (65-70%) were made during the day, but the ability to provide late night refreshment after 00:00 was important, because Subway customers expected to be able to obtain hot food and drinks. The availability of hot food and drink was an important part of the Subway brand.

He suggested that Subway differed from the majority of take-away establishments, because its customers had to answer 4-5 questions before their order could be prepared. He suggested that this required a certain standard of behaviour and understanding on the part of the customer.

He said that as the premises were located at the end of the Southgate shopping centre not far from the bus station, there were people, particularly students making their way home, in the area already. He suggested it was unlikely that many people would go to the area simply to visit Subway.

He noted the absence of representations to the application from the Police and Environmental Health.

He said there was a small amount of seating in the premises, which was advantageous in preventing customers from gathering in the street.

He noted that the licensing objective to which the representations of the Other Persons referred was the prevention of public nuisance in terms of litter and noise. He turned to each of these aspects in turn.

Litter

He said that Subway was not the only user of the yard at the back of the premises; it was also used by a Thai restaurant and there were also large university buildings situated at the back as well. Subway's obligation was to put rubbish out in the yard by 4pm for collection by the local authority. Subway placed their litter in transparent bags to differentiate it from rubbish from other premises, so the black bags visible in the photograph submitted by Mr Byrd and Ms Luff obviously did not emanate from Subway. If the rubbish was not collected by 8pm, it had to be brought back inside. There were problems with rubbish in the yard, to which other premises contributed,

but, he submitted, the key fact in relation to this application was that provision of hot food and drink for the additional hours would have no additional impact on the existing problems with rubbish.

Internal noise

He said that the freezer door, which could be a source of noise disturbance to other occupiers of the building, was not opened after 22:00; there was no need, because regulations required bread to be thawed for ten hours. The internal staircases had rubber fittings to reduce noise. The majority of tables on the first floor were screwed to the floor and chairs had rubber feet. The first floor area was closed to the public after 22:00 and was not included in the application.

The representatives of the applicant were questioned by Members. In response they stated:

- They did appreciate that the premises had neighbours and solicited feedback from them. There had been no complaints from neighbours until the variation applications had been made.
- The conditions offered in their operating schedule were being currently applied.
- They would dispute many of the comments made by the Other Persons about noise. There was no music on the premises, which were in any case situated a long way from residents. Mrs Pasco had visited neighbouring apartments and the only noise that could be heard from Subway had been the sound of the freezer door.
- Rubbish was put into bags and then into bins, which could not be locked. The bins were then moved from the courtyard to the edge of the road. The bins had to be moved back into the courtyard by 8pm. It was not possible to see the bins from within the premises. or to see when the rubbish collection took place. If there were too many bags to fit in the bin, then the surplus bags would be retained in the premises. There was dedicated space in the premises for this purpose. There had been problems with rubbish collection.
- Mrs Pasco was always ready to discuss any problems about noise or litter with the neighbours.
- The extra hours would not make it more likely that the freezer door would be opened after 22:00.

The Principal Solicitor advised that the details of rubbish collection and the photographs of rubbish present during daylight hours only had marginal relevance to an application to provide late night refreshment from 00:00 to 03:00. A Member suggested that it was relevant whether adequate management processes were in place, and whether they were being applied competently; he was not convinced that this was the case on the basis of the evidence given. He asked the applicants how they would explain the presence of clear plastic bags full of rubbish lying in the road next to a Subway vehicle, as shown in the photograph. Mrs Pasco said that she was unable to explain this; the rear of the premises was not monitored by CCTV. Mr

Parrott explained that Subway products were not bought pre-wrapped; “subs” were created on the premises from separate ingredients, so the amount of litter produced by Subway was actually much less than that produced by many other premises.

Mr Bryan Hussey stated his case. He said he was a partner in in Bryan and Chris Hussey Partnership and a director of BCH Camping and Leisure Ltd. The partnership owned a three-bedroomed maisonette at 30 Southgate Street on the upper floor and a shop on the ground floor. The maisonette had three female tenants. The bedrooms are at the front and look down directly on the pavement in front of Subway. He was concerned that Subway was applying again for an extension of late night refreshment after being refused twice before. Something of a “war of attrition” had developed between some residents and Subway. He referred back to statements made by the applicants at previous hearings, but was ruled out of order by the Chair. He was advised to focus on the current application. Mr Hussey submitted that he thought it relevant to the present application that things promised by the applicant in the past had not been delivered. However, he agreed to limit his comments to how his tenants were being impacted now and how they were likely to be affected in the future. He said his tenants had put him on notice that if this application were approved, they would not renew their tenancy in September. Hard-working residents were being driven from their homes because of the lack of a quiet environment. His tenants and their neighbours were worried that the situation would become much worse if the application were granted.

He said that one of the letters submitted by the applicants as additional information was one addressed to his brother at his (Mr Bryan Hussey’s) home address on 8th August 2015. This letter had been edited, and was not the same letter that had been sent to his brother. He submitted that it had been altered to show Subway in a better light. He had kept the original and had it with him. He had sent a copy of the original to Licensing well before he had seen the applicant’s submission. He had replied to the original letter in August 2015 and sent copies of both letters to all his tenants and his neighbours. He requested that the version submitted by the applicant should be ruled inadmissible.

He submitted that Subway anticipated a significant increase in customer transactions from extending the hours of late night refreshment. Why else would they make repeated applications presented on their behalf by expensive lawyers? Mr House had written to him in January 2015 that the application “was not greedy, but made to meet the higher than average rates in the area”. This clearly indicated that they anticipated significantly more customers, and he had no confidence in the sales projections submitted by Subway.

He suggested that after 00:00 a significant portion of Subway’s customers would be inebriated late-night revellers, more likely to cause nuisance with noise and litter. He was extremely concerned about activity around Subway continuing until 03:00 on a Sunday morning, or in reality until 04:00, if closing up was taken into account. He considered that Subway staff were unable or unwilling to manage the existing trade, let alone additional customers up to 03:00. He requested the Sub-Committee to reject the application.

Mr Byrd stated his case, referring to his submission on page 87-88 of the agenda. He said that the problem of litter in the area had increased significantly since Subway had commenced operations. He agreed that the black bags were not

Subway's, but suggested that people were more likely to deposit rubbish on top of rubbish that was already present. Subway staff were unresponsive when complaints were made about rubbish. The yard had become a dumping ground for litter and people urinated there. The sound of the freezer door being closed was very distinctive. It cannot be closed quietly because it has a magnetic lock. The back door banging was also loud enough to wake people up. He referred to the exchange of emails with Stuart House on pages 97 and 98 of the agenda. One of the problems in communicating with Subway was the high staff turnover. A positive dialogue had been established with one member of staff and noise had reduced for a while, but things had deteriorated when that member of staff left. There was no one in charge on the premises; when requests to speak to the manager were made, the answer was "the manager's not around." He felt that internal and external noise was bound to increase if the application were granted. There were problems with parking in the area.

In reply to questions from Members Mr Byrd stated:

- For the first six months of Subway's operation they had only opened during the day time; the impact on residents had increased over time as they had extended their hours.
- He thought inebriated people were likely to prefer hot food to cold.

Mr Hussey thought that the impact on residents had been exacerbated after Subway were authorised to provide late night refreshment up to 00:00. He regretted that he had not opposed this at the time and thought that any extension could only worsen the impact.

Members asked why the Other Persons had not complained to Environmental Health. Mr Byrd said that people had busy lives and it was very time consuming to find out the procedure for making complaints to the Council. Mr Hussey said that there was no response to complaints, so residents felt that it was worth making them. Complaints were made to staff in Subway all the time, but there was no improvement.

The parties summed up.

Mr Byrd said he that the extension of hours was likely to increase nuisance for residents. He submitted that the number of complaints and representations did not truly reflect the impact that Subway was having on residents, many of whom simply did not have the time to make complaints.

Mr Hussey said that there would be more additional customers than Subway had shown in its sales projections and that a high proportion of them would be drunk in what was a cumulative impact area.

Mr Parrott summed up for the applicant. He said that the essence of the application was the addition of the provision of hot food during hours that Subway was already trading. The actual figures for the increase in sales after the previous grant of late night refreshment had been submitted in evidence. The projections for the future increase in sales if the application were granted were based on these. Figures had also been given for the increase in sales in a Bristol outlet. These figures were a best guesstimate. He submitted that the any problems with rubbish would be unaffected by

the extension of late night refreshment. No evidence had been submitted of any problems with drunken customers. Customers were overwhelmingly people who were in the area already.

The Principal Solicitor advised that the current hearing was not a review, so Subway's current licence could not be curtailed in any way. He referred to the suggestion that correspondence had been edited and said that the full correspondence had been given in evidence and it was for Members to decide what weight to attach to that correspondence and the oral submissions relating to it. He further advised that cumulative impact did not apply to late night refreshment, so the Sub-Committee did not have to consider whether the applicant had rebutted a presumption that the application should be refused and that parking and alleged criminal activities in the yard were not relevant to the application.

Following an adjournment, it was **RESOLVED** to grant the application with the mandatory conditions, conditions consistent with the operating schedule and three additional conditions imposed by the Sub-Committee.

Decision and reasons

Members have today determined an application to vary a premises licence at Subway, 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 are 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 all relevant written and oral representations and were careful to balance the competing interests of the applicant and interested parties. Members were however careful to disregard the irrelevant issues raised such as parking, allegations of potential criminal activities in the rear yard, fabrication of supporting information and repetition of historic objections.

The application was for a variation of a premises licence to provide late night refreshment on Thursday between 23:00 and 03:00 and Friday and Saturday between 23:00hrs and 03:00 hrs.

The applicant stated they are experienced operators in the Bristol and Bath areas. With the benefit of operating under its current licence together with figures from a Bristol outlet they were able to give an indication of the likely impact this application may have on the licensing objectives. The figures presented showed a small net increase in sales under in Bath and when taken together the projection suggested a small increase in trade with an anticipated minimal impact on the licensing objectives. Whilst the overall core business of Subway was cold food the applicant stated that its customers expected the hot food offering and this was an important part of the brand. With regard to the extra footfall it was accepted that Subway is situated in a very busy part of the City however, there had never been any incidents relating to the premises other than those raised by the interested parties which related to public nuisance. With regard to the neighbour issues it was stated that the

rear yard is also used by other businesses and the litter issue is more generally a building management issue. So far as noise was concerned it was accepted there was noise from the freezer door. It was stated that there was no need for staff to use the freezer at night and that staff had been told not to use it after 10pm. Further, steps had been taken to minimise noise from the freezer and movable objects within the premises and a number of conditions were suggested to reduce the impact in the locality in terms of noise and litter.

The interested parties stated that Subway is affecting the quality of life in the neighbourhood and that if the application is approved it will become much worse particularly as the customer base at that time is likely to be the inebriated late night revellers. It was further stated that since Subway began operating under its current licence there had been a marked increase in litter in the rear yard and Subway were disregarding the licence condition on how its waste was to be dealt with. The interested parties also suggested that staff working at the store disregarded the agreement that the freezer would not be used between the hours of 22:00 and 08:00 and when taking this altogether suggested that Subway were not managing the store thereby causing a nuisance.

Members noted that the premises are situated in a mixed residential/commercial development and Subway already trade until 03:00hrs offering cold food. Members further noted that there had been no representations from any Responsible Authorities and that interested parties had not made any complaint about Subway to a Responsible Authority. Members also noted that the applicant had suggested a number of conditions designed to deal with public nuisance at all times the store was operating and these were not limited to its operation during licensable activities.

With regard to the issues at the rear of the premises Members found that there is nuisance arising from waste and litter associated with a lack of management and staff awareness of this area. Further that there are also issues with noise disturbance from the closing of the freezer door late at night and an apparent lack of staff awareness of their responsibilities when carrying out their activities.

With regard to the application Members reminded themselves that the application was for the provision of late night refreshment Members took account of their Statement of Licensing Policy which has the aim of encouraging the late night economy. Accordingly, Members considered that with conditions consistent with the operating schedule and a number of additional conditions the premises were unlikely to have a detrimental effect on the licensing objectives. Members therefore resolve to grant the application subject to conditions consistent with the operating schedule, the mandatory conditions and the following additional conditions as appropriate and proportionate to deal with the objective of the prevention of public nuisance arising from noise, litter and a general staff unawareness:

- The shall be no access to the freezer room between 00:00hrs and 05:00hrs
- There shall be CCTV camera installed and maintained in good working order covering the rear door of the premises with images retained for 30 days.
- All staff shall be trained in the contents of the licence, the conditions displayed in the staff area and a record of that training made and maintained.

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

The meeting ended at 1.26 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services