

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

### **LICENSING SUB-COMMITTEE**

Thursday, 1st December, 2016, 10.00 am

**Councillors:** Les Kew (Chair), Mark Shelford and Caroline Roberts

**Officers in attendance:** Carrie-Ann Evans (Senior Legal Adviser - Bath & North East Somerset Council), Alan Bartlett (Public Protection Team Leader), John Dowding (Senior Public Protection Officer) and Ian Nash (Public Protection Officer (Licensing))

#### **59 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer advised the meeting of the procedure.

#### **60 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **61 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **63 MINUTES: 3RD NOVEMBER 2016**

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

#### **64 EXCLUSION OF THE PUBLIC**

The Sub-Committee 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, **RESOLVED** that the public should be excluded from the meeting for the following two item of business and the reporting of the meeting be prevented under Section 100A(5A), because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

#### **65 TAXI PROCEDURE**

The Chair drew attention to the procedure to be followed for the two taxi hearings.

#### **66 APPLICATION FOR A COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR DMC**

Mr DMC confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report. A DVLA check had revealed that Mr DMC had had been banned from driving for six months in 2014

after accruing more than 12 penalty points for speeding offences in a 3-year period. He had also been convicted of speeding offences during the term of his previous Hackney Carriage/Private Hire Driver's Licences, most of which had not been disclosed the Council in accordance with the terms of his licence.

The Sub-Committee adjourned to allow Members time to study Mr DMC's DVLA print, a written statement from him and a reference given on his behalf.

When the Sub-Committee reconvened, Mr DMC said that there was nothing he could add to his written statement. He acknowledged that he had been wrong not to disclose his convictions for speeding offences. He said this had happened during a short period of time when he been under stress because of his difficult personal circumstances. He was questioned by Members. He did not wish to make a closing statement.

Following an adjournment the Sub-Committee **RESOLVED** that Mr DMC was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence for the reasons set out below.

### Reasons

Members have had to determine 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.

Members had to decide whether the applicant was a fit and proper person to hold a licence considering all relevant circumstances.

Members took account of the applicant's written statement, reference and his oral representations and balanced this against the information disclosed on his BANES and driving records.

The applicant did not seek to go behind his speeding convictions and referred the Committee to his written statement. He referred to difficult personal circumstances as an explanation for his actions.

Whilst members viewed the convictions seriously they noted that he had not received three or more minor motoring convictions within the last 3 years and was not therefore, caught by that part of the Council's Policy. Members felt having heard from the applicant that the offending related to a difficult period in his life and that he had moved on. Members felt he understood now, the importance of complying with the conditions of his licence.

Accordingly, on balance members found Mr D M C is a fit and proper person to hold a Combined Hackney Carriage/Private Hire Driver's Licence.

## **67 APPLICATION FOR A COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE - MR JEJC**

Mr JEJC confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report. A DBS Certificate obtained by Mr JEJC in connection with his licence application had disclosed a formal police caution.

The Sub-Committee adjourned to allow Members to study the DBS Certificate and a written statement provided by Mr JEJC.

After the Sub-Committee reconvened, Mr JEJC said that he did not wish to enlarge on his written statement, which he thought clear. He was questioned by Members. He did not wish to make a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** that Mr JEJC was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence for the reasons given below.

### Reasons

Members have had to determine 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.

Members had to decide whether the applicant was a fit and proper person to hold a licence considering all relevant circumstances.

Members took account of the applicant's written statement and his oral representations and balanced these against the information disclosed on his DBS Certificate.

The applicant said that there was not a great deal that he could add to his written statement, but he had had no brushes with the law since the incident in 2012.

Members noted that the applicant had been referred to the Committee as his DBS results disclosed a caution on his record. That said, the applicant had remained conviction-free for the period anticipated by the policy and they were satisfied, based on what they had read and heard, that he was a fit and proper person to hold a Combined Hackney Carriage/Private Hire Driver's Licence.

## **68 RETURN TO OPEN SESSION**

The Sub-Committee returned to open session.

## **69 LICENSING PROCEDURE**

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

## **70 APPLICATION FOR A PREMISES LICENCE FOR DOMINO'S PIZZA, 40 MOORLAND ROAD, OLDFIELD PARK, BATH BA2 3PN**

Applicant: Team West Ltd t/a Domino's Pizza, represented by Chris Grunert (John Gaunt and Partners) and Gary Coombes (Manager)

Other Persons: Ross Double, Joy Burt, John Branston, Nigel Locker and Councillor Will Sandry

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

The Chair asked the parties whether they were content for recent emails submitted by the other persons to be taken in evidence. Mr Grunert, for the applicant, said that he was, though he would make comments during his submission on the weight that he thought should be attributed to them. The Chair was content for the e-mails to be taken into evidence as well.

The Public Protection Officer summarised the report. The application was for the provision of late-night refreshment from 23:00 to 05:00 every day. It was proposed that takeaways and/or on-site consumption would cease at 02:00 and that only a delivery service would operate between 02:00 and 05:00. The proposed opening hours were 10:00 to 05:00 the following day. Representations had been received from other persons relating to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder. The Sub-Committee was invited to determine the application.

Mr Grunert stated the case for the applicant.

He said that the applicant now wished to amend the application and reduce the hours sought for late-night refreshment to 23:00-00:00 on Sundays to Thursdays, with the premises closing at 00:00, and 23:00-01:00 on Fridays and Saturdays, with the premises closing at 01:00. Domino's was already operating in Bath and had a track record that could be judged. There was a branch in London Road. There were also other premises in the surrounding area, all of which were operating a delivery service till 05:00. No enforcement action had ever been taken against these premises by officers of the Council or of other authorities. He submitted that it was relevant that the London Road premises were close to residential premises above and behind it. At the time of the application for a licence for London Road, Environmental Health had submitted a representation because of potential nuisance. The application had been granted with conditions and since then Environmental Health had raised no concerns about the premises.

The applicant had consulted with local residents both before making the application and subsequently. A meeting had been held with residents. Residents were not unanimous, but the applicant had felt that there was a consensus that the hours now proposed were acceptable to the majority. Some representations had suggested that this application was 'the thin end of the wedge', but the law required that each application be judged on its own merits. If at a future date the applicant wished to apply to extend hours, there would be the same statutory process and representations could be made. He submitted that the operation of the London Road premises established a track record for Domino's in Bath, though he acknowledged that Moorland Road had its own individual characteristics.

He noted that there had been sixteen representations, of which two had been withdrawn and a couple of others amended. There was concern expressed in the representations about changing the character of the area. Quite a few of them

mentioned students. Some expressed fear that this application could be a precedent for others or lead to an increase in litter. He said that the Moorland Road premises comprised a collection area for takeaway customers and a small restaurant on the first floor. There had been no complaints about noise nuisance or other issues relevant to the licensing objectives in relation to the premises. Only one representation was from a resident of Moorland Road, the others live several streets away. He did not see how the operation of the premises would give rise to public nuisance. He submitted that a delivery service per se did not constitute public nuisance. In any case if at present a customer telephoned the Moorland Road premises after 23:00, the call would be routed to London Road, and an order would be delivered from there. So Domino's were already delivering at night in the Moorland Road area. Concern had been expressed that the extra hours would lead to more people visiting the area. But, he argued, businesses do not extend their hours unless they believe there is an existing demand. They do not open longer and then start trying to attract customers. Students were part of the customer base, but not the largest part. The average cost of a Domino's order was £18, which is significantly higher than for other fast food outlets. Domino's deliveries were already taking place in the Moorland Road area and there was not a single reference to unsatisfactory behaviour by anyone wearing a Domino's uniform. The Code of Conduct for Domino drivers had been circulated to Members and the other persons. Complaints against drivers would be investigated.

He drew attention to the conditions offered in the operating schedule. The applicant now wished to amend the condition relating to the number of delivery vehicles outside the premises after 23:00 by reducing 'five' to 'four'. The applicant would also accept a condition prohibiting the use of mopeds by delivery staff after 23:00 and a condition requiring the display of a notice in the window of delivery vehicles giving the contact details of the store.

He drew attention to paragraph 9.12 of the Secretary of State's Guidance which states that the Police should be the licensing authority's main source of advice on the promotion of the prevention crime and disorder licensing objective, and noted that there had been no representation from the Police. In addition the Environmental Health Service, which had made a representation to the London Road application, had not made one to this application, even when the applicant had been seeking longer hours for late-night refreshment than those announced at this meeting.

In conclusion he submitted that the application was a reasonable one, and urged the Sub-Committee to grant it.

Other persons put questions to the applicant.

Ross Double said that he had been to a meeting with Domino's about this application and understood that the reduced hours announced by the applicant were only for a trial period. He was also not sure how long deliveries would continue after 01:00. Mr Grunert replied that if this application were granted, the store would close and all activity would cease at 01:00. There would be no deliveries from the Moorland Road premises after 01:00, though there could still be deliveries to Moorland Road from the London Road premises.

Joy Burt asked when last orders would be taken and whether deliveries would be despatched after closing time. Mr Grunert said that he believed that if a delivery

began at the closing hour that would comply with the licence. Staff at the premises would have to be aware of the hour that licensable activity had to cease and manage the processing of orders received in accordance with that deadline.

John Branston asked what evidence there was of the customer demand referred to by the applicant. He suggested that often demand was created by a product or service being offered. The Senior Legal Adviser advised Members that demand was not a relevant issue for the Sub-Committee, and that only the licensing objectives should be considered.

Joy Burt asked whether orders would be refused if they were received too late to be processed by the terminal hour. Mr Grunert replied that, subject to correction from the Committee's legal adviser, the applicant believed that as long as the order left the premises within the licensed hours, there would be compliance with the licence. He did not believe that the regulation of deliveries was a matter for the Committee. Orders might have to be refused or referred to London Road to fulfil. The Senior Legal Adviser said that she agreed with Mr Grunert's interpretation that as long as hot food left the premises before the terminal hour for late-night refreshment there would be compliance with the licence.

The other persons stated their cases.

John Branston submitted that the application should not be looked at in isolation; the phrase 'thin end of the wedge' was entirely appropriate. Domino's had indicated that they might apply for longer hours in the future. He also suggested that there could be no comparison between premises located on a trunk road, such as London Road, and in Moorland Road, a densely-populated residential area. The granting of this application would signal the commencement of a night-time economy in the area, which local residents wished to resist. He said that Moorland Road was regarded as a "treasured asset" in Oldfield Park, which was under a lot of pressure from parking, litter and night-time noise. Customers did not immediately disperse after making purchases at takeaways. Of course it was difficult to associate noise nuisance with particular premises; if residents looked out of the window every time there was a disturbance, they would not get any sleep at all. Plastic fascia signs outside premises also detracted from the character of the area. Other outlets had opened recently, which respected the character of the area, as this one did not. He recognised that a balance had to be struck between conflicting interests, but residents felt that they had only a small voice in these matters. He was lucky to be able to take time off to attend today's hearing, as other residents could not. He did not understand the benefit to the area of this application. Pizzas could already be delivered from London Road. Given the absence of traffic in the early hours, it would be at most a five- or six-minute journey. How much time would be saved by delivery from Moorland Road? How did the benefit outweigh the detriment to the area? He believed that the same terminal hour should apply as applies to other food outlets in Bath which are not located on trunk roads. Residents wanted a clear line drawn that would prevent the development of a night-time economy in the middle of a residential community. If this application was granted, it would be difficult to refuse late-night applications from other food businesses. Only a refusal could satisfy residents.

Ross Double said that Swindon had refused a planning application from Domino's through concern that there would be too much disruption to residents. The Planning Inspector had upheld this decision, accepting that the application could cause

nuisance to residents and an increase in crime and disorder. He agreed with Mr Branston that the granting of this application would open the door to further similar applications, so that Moorland Road could end up as a fast food strip. He had posted information about this application on the Moorland Road website, and the comments received had been overwhelmingly opposed to the application.

Joy Burt said that Domino's could only control what happened on their premises or immediately outside. She and her neighbours were not primarily concerned about what happened on the premises, but the impact of customers, probably having had drink, walking home in the early hours of the morning making noise and dropping litter. To allow this application would compound problems already occurring in the area. Many residents had to get up to go to work and needed their sleep. There is a shortage of parking in the area at all times of day and delivery vehicles would probably have to stop in the middle of the road. The application would set a precedent for other fast food outlets.

Nigel Locker said that Moorland Road was a very precious area. What made it so special was the number of independent traders, and he would like to see its character preserved. He personally had nothing against fast food outlets, but they did change the character of the area. He feared that Moorland Road would become a destination for people who wanted to pick up food on the way home. The market for late-night fast food was to be found principally among those who had been out partying and drinking and they would continue to be in a boisterous mood on the way home. They would make noise and drop litter. He submitted that 00:00 was quite late enough for people to be able to buy food.

Councillor Will Sandry addressed the Sub-Committee. He said that those who had made representations really did care about the area. The application raised the question of what sort of community was wanted in Oldfield Park. He acknowledged that the focus of the Sub-Committee had to be on the licensing objectives. Residents had put forward their views very clearly. The representations were not motivated by hostility to Domino's or fast food outlets, but by concern about the nature of Moorland Road. He had spoken to Councillors for the London Road area, who had told him that residents had been delighted when Domino's had opened, because this had helped reduce problems with drink and drugs that had occurred when the old Longacre Tavern had been in operation. Moorland Road does not have problems with drink and drugs. Domino's was welcome in Moorland Road, because of the variety they added to the shopping parade, but the hours proposed were not welcome. There are 28 electors registered in the 21 flats on Moorland Road. He asked Members to imagine the impact on these people of late night operation by Domino's. He suggested that there would be public nuisance to those people. He said that the photographs of Moorland Road provided by the applicant were misleading, because they had been taken in the daytime, when there were many cars in the street. At night there were virtually no cars because of parking restrictions. At night it becomes a quiet residential street. It only starts to get busy at about 06:30. He felt that the community would consider it fair and reasonable if the hours for Domino's matched those of Adel's, with a terminal hour of 23:00 on Sundays to Thursdays and 00:00 on Fridays and Saturdays.

In reply to a question from a Member, Councillor Sandry said that Adel's was situated in Shaftesbury Road, just around the corner from Moorland Road and about

120 metres from Domino's, and is a takeaway with a delivery service. Adel's had had longer hours in the past, but they had been reduced.

The Other Persons did not wish to sum up.

Mr Grunert summed up for the applicant. He said that application should be considered on its own merits, and that the appropriate weight should be given to the representations. Existing issues in the area could not be the responsibility of Domino's, because they were not trading there at present. Councillor Sandry had referred to the 28 residents of Moorland Road on the Electoral Register, but in fact only one representation had been received from a resident of Moorland Road. Licences could be reviewed if they impacted adversely on the licensing objectives. The applicant recognised that the grant of a licence was a privilege with responsibilities attached to it. He asked the Members to consider the evidence given of how the existing Domino's premises in London Road was being operated and the absence of complaints. The applicant had established channels of communication with Councillor Sandry and residents if they had concerns in the future.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application with modifications as detailed below.

### Decision and reasons

Members have had to determine an application for a new Premises Licence for Domino's Pizza, 40 Moorland Road, Oldfield Park, Bath BA2 3PN. 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 they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. Members noted that each application is considered on its own merits.

Members were careful to take account of the relevant written and oral representations made and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters such as demand.

Members noted that there had been no representations from Responsible Authorities, including the police.

### **The Applicant**

The Applicant indicated in writing and confirmed orally at the hearing that they were willing to agree to a reduction of hours for the provision of late night refreshment to:

- Friday and Saturday from 23:00 to 01:00am with takeaways and/or site consumption and/or deliveries finishing at 01:00am
- Sundays to Thursday from 23:00 to midnight with takeaways and/or site consumption and/or deliveries finished at midnight.



In relation to the opening hours the applicant indicated that they were now proposing as follows:

- Fridays and Saturdays the premises would close at 01:00am
- Sundays to Thursday inclusive the premises would close at midnight

Mr Grunert, Solicitor for the applicant noted that Domino's operate at a number of other locations in the area, none of which have been subject to enforcement action. He did acknowledge however that each location is different and each application is considered on its own merits.

Mr Grunert noted that in representations there is no anecdotal evidence of these premises operating in a way that disturbs residents and they have been operating to 23:00 without the need for a licence.

Mr Grunert submitted that the use of a delivery vehicle is not a nuisance of itself and at present if you telephone the Moorland Road premises after 23:00 it is diverted to London Road, so deliveries are taking place without an issue.

Two further conditions were tendered by the Applicant's solicitor:

- No more than 4 delivery vehicles should be in use from 23:00 daily.
- That after 23:00 delivery drivers would not be permitted to make deliveries by means of moped.

Furthermore, all drivers are to have a note in their vehicle stating 'do not slam doors, rev engines or play music' together with contact details for the store.

Mr Grunert referred to the Statutory Guidance at paragraph 9.12 in relation to representations from the police. It was noted that there have been no representations from the police and Responsible Authorities and that was when the application had been until 5am in the morning.

### **The Interested Parties**

The Interested Parties objected to the application on the grounds of the prevention of public nuisance licensing objective and the prevention of crime and disorder.

Concerns were expressed regarding the noise and disturbance that would be generated due to the use of the premises for late night refreshments, together with concerns regarding littering of pizza boxes or the noise emanating from the delivery vehicles.

There were also concerns that the premises would attract inebriated, late night revellers and this may generate crime and disorder.

### **Members**

In reaching their decision Members noted that in relation to paragraph 9.42 of the Statutory Guidance their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what is intended to be achieved.

Members also noted that in relation to public nuisance, the Statutory Guidance at paragraph 2.20 says that “beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right.”

Members considered that the premises were likely to have an effect on the licensing objective of prevention of public nuisance, however they felt that conditions would be effective in the promotion of this licensing objective.

Accordingly, members resolved to approve the application subject to:

- Changes to the hours for the provision of late night refreshment as offered by the applicant; and
- Changes to the closing time for the premises as offered by the applicant; and
- Conditions consistent with the operating schedule, subject to modifications offered by the applicant; and
- A condition offered by the Applicant and approved by Members
- All of which is specified below: and the mandatory conditions.

**Changes to hours for late night refreshment as follows:**

- Friday and Saturday from 23:00 to 01:00am with takeaways and/or on site consumption and/or deliveries finishing at 01:00am
- Sunday to Thursday from 23:00 to midnight with takeaways and/or on site consumption and/or deliveries finishing at midnight.

**Changes to the closing time for the premises as follows:**

- Fridays and Saturdays the premises would close at 1:00am
- Sunday to Thursday inclusive the premises would close at midnight.

**Conditions consistent with the operating schedule subject to the following modifications:**

Change from *“No more than 5 delivery vehicles are to be in use after 23:00 on Sundays, and after 01:00 Mondays to Saturday”* to *“No more than 4 delivery vehicles are to be in use after 23:00 daily.”*

Change *“All drivers are to have a note in their car stating ‘do not slam doors, rev engines or play loud music’* to *“All drivers are to have a note in their car stating ‘do*

*not slam doors, rev engines or play loud music, together with contact details for the store.”*

**Condition offered by the Applicant and approved by Members:**

- That after 23:00 delivery drivers would not be permitted to make deliveries by means of moped.

Members took the view that the additional conditions offered by the Applicant were appropriate and proportionate in promoting the prevention of public nuisance licensing objective.

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

The meeting ended at 12.40 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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