

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Wednesday 15th August 2012 at 10am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor R Groom (Chairman) Councillor R Bird Councillor T Wright
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Emma Duncan
Premises:	Britlita, 60 Loke Road, King's Lynn
Applicant:	Mr Andrius Kazragis
Applicant's Representative:	Mr Byatt Licensed-Inn-Tuition
Other Persons: (present)	Mrs Janet Perry Mr Ray Rudd
Other Person's Representative:	Councillor D J Collis

1. WELCOME AND INTRODUCTIONS

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a premises application in respect of Britlita, 60 Loke Road, King's Lynn. He introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Emma Duncan. The applicant, his representative and "other persons" and their representative introduced themselves.

2. THE PROCEDURE

At the request of the Chairman, the Licensing Manager outlined the procedure that would be followed at the hearing and took over the proceedings.

3. THE APPLICATION

The Licensing Manager presented his report and explained that a premises licence was required under the Licensing Act 2003 for the sale of alcohol,

regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am). The four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

Mr Andrius Kazragis had made an application under Section 17 of the Act for a premises licence in respect of 'Britlita' for the licensable activity of the 'sale of alcohol by retail'. A copy of the application had been attached at Appendix 1 and if granted would allow the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Sale of Alcohol: (For consumption 'off' the premises only)	Monday to Sunday:	9am – 10pm

Mandatory Conditions

The Licensing Manager explained that the premises licence, if granted would be subject to the following mandatory conditions:

- a) Under Section 19(2) of the Licensing Act 2003, no supply of alcohol may be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- b) Under Section 19(3) of the Licensing Act 2003 every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- c) The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale of alcohol. This policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Conditions Consistent with the Operating Schedule

The licence, if granted would be subject to the following conditions which were consistent with the operating schedule:

- (a) A 'refusals book' would be maintained at the premises to record all details of all refused alcohol sales. The book shall include the date, time and circumstances of why the sale was refused. The book must be

produced upon reasonable request by authorised officers of the Norfolk Constabulary and Borough Council of King's Lynn & West Norfolk.

- (b) A digital CCTV system shall be maintained at the premises and in working order at all times. Cameras are to monitor all public areas and images must be retained for a minimum of 28 days. Copies of images must be downloadable in a digital format and provided to police or authorised officers of licensing authority upon reasonable request. One camera must view the front access door to the premises.
- (c) An intruder alarm shall be installed to current British Standards and properly maintained at all times.
- (d) Any secure alcohol store identified and used within the premises needs to be secured by a solid door with lock fittings to current British Standards 3621:2007 or equivalent.
- (e) Customers must be prevented from having access to any alcohol store at all times by using a secure locking mechanism.
- (f) Any alcohol store must also be protected by the intruder alarm system.
- (g) Alcohol displays must be in a position that provides staff with the easiest surveillance opportunity. Spirits must be kept behind the service counter and served to customers.
- (h) Clear signage must be displayed to inform customers that CCTV is in operation.
- (i) Any new doors or roller shutters must meet the standard Security Rating of LPS 1175 SR3/4 to provide resistance to determined attack.
- (j) Exterior Doors are required to be fitted with 5 Lever Mortice Locks to British Standard 3621:2007 or equivalent.
- (k) Any glazing in doors and vulnerable windows must be fitted with a 6.8mm Laminate product. Any existing glazing that does not meet these standards can be fitted with an aftermarket film to improve its performance.

Representation from Responsible Authorities

Section 13(4) of the Act defined the 'Responsible Authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

The following has been received from the Responsible Authorities:

- (a) The Norfolk Constabulary would have objected to the application under the 'Prevention of Crime & Disorder' licensing objective if the applicant

had not agreed to the conditions mentioned under the Operating Schedule at paragraph (b) to (k) above. A copy of their letter dated the 25th July 2012 had been attached to the report at Appendix 2 for information. The Licensing Manager referred to the last paragraph on page 30 of Appendix 2 that stated that “The hours which have been applied for are also more extensive than the other mini-markets in this area”. He explained that this statement was in fact incorrect and the hours applied for were not more extensive than others within the area. The Police’s Licensing Officer had confirmed and apologised for the error.

(b) Representations from the other responsible authorities are as follows:

<u>Responsible Authority</u>	<u>Comments Received</u>
Norfolk Fire Service	None
Norfolk Trading Standards	None
Norfolk Safeguarding Children’s Board	None
Public Health	None
Planning (BCKLWN)	None
Health & Safety (BCKLWN)	None
CS&NN (BCKLWN)	None
Licensing Authority (BCKLWN)	None

Representations from ‘Other Persons’

As well as responsible authorities, any ‘other person’ can play a role in a number of licensing processes under the Act. This included any individual, body or business that may make representations to applications. Representations made must relate to at least one of the four licensing objectives.

There was a petition containing 341 names objecting to the application from ‘other persons’. A brief analysis of the petition had shown that 13 signatories did not live in King’s Lynn and 93 addresses could not be fully identified. A copy of the petition had been attached to the report at Appendix 3.

Notices

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. A copy of the public notice appeared in the Lynn News on Friday 6th July 2012 and should have been displayed on the premises until the 30th July 2012.

Plans

A plan of the premises had been attached at Appendix 4 and a location plan showing the location of the premises and immediate area had been attached at Appendix 5. The Licensing Manager referred to the location map and explained that in order to give the Panel a guide to scale and location of objectors, the circle indicated on the map had an approximate 150 metres radius.

Borough Council of King's Lynn & West Norfolk's Licensing Policy

The current Statement of Licensing Policy was approved by full Council on the 25th November 2010 and the following extracts may be relevant to the application and assist the Sub-Committee:

3.0 Fundamental principles

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application.

3.3 Every application will be dealt with impartially and on its individual merits. The Borough Council will not refuse to grant or vary an application unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation.

3.4 Licensing is about regulating licensable activities on licensed premises and any conditions that are attached to premises licences or club premises certificates will be focused on matters which are within the control of the individual licensee or club, i.e. the premises and its vicinity.

Guidance Issued Under Section 182 of the Licensing Act 2003

Under Section 4 of the Act, Licensing Authorities must have regard to guidance issued under Section 182. The current Guidance was issued by the Home Office in April 2012 and offered advice to Licensing authorities on the discharge of their functions under the Act.

The following extracts may be relevant to the application and assist the Sub-Committee:

Each application on its own merits

1.16 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy where, for example, its effect on cumulative impact is relevant. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Public Nuisance

2.33 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.34 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.

2.39 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives. However, premises should have adequate dispersal policies (where appropriate) in place to ensure that customers leave the premises promptly and with minimal disruption to those in the surrounding area.

- 2.40 Beyond the immediate area surrounding the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

Other Persons

- 8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious.
- 8.13 Whilst any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

Where Representations are Made

- 9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, (see paragraphs 9.4 to 9.10 below) the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Relevant, Vexatious and Frivolous Representations

- 9.4 A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant.

In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

- 9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.
- 9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.
- 9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

Hearings

- 9.33 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.34 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - Its own statement of licensing policy.
- 9.35 The licensing authority should give its decision within 5 working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.
- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives.

Determining Actions that are Appropriate for the Promotion of the Licensing Objectives

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Conditions

10.12 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

10.13 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

Proportionality

10.14 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.

10.15 Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives. Consideration should also be given to wider issues such as conditions already in place that address the potential negative impact on the promotion of the licensing objectives and the track record of the

business. The physical safety of those attending such events should remain a primary objective.

Duplication with other statutory provisions

10.16 If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties as conditions.

Questions to the Licensing Manager

In response to a question raised by Councillor D J Collis, Mr Byatt confirmed that the applicant was booked on a course the following day in order to obtain his personal licence. The Licensing Manager also clarified that even if the licence was granted today, no sale of alcohol could take place when there was no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor did not hold a licence. The designated premises supervisor did not have to be on the premises at all times but every supply of alcohol under the premises licence must be made or authorised by a person who held a personal licence.

In response to a further question from Councillor D J Collis on clarification about details in relation to a "refusals book", the Licensing Manager explained that this was not a legal requirement required either by the Licensing Authority or the Police but it had been offered by the applicant. He referred to page 26 of the Agenda (Box P) where the applicant had described the steps he intended to take to promote the four licensing objectives; the refusals book being one such step. It was acknowledged that it was unlikely that the name of individuals would be able to be recorded, but details of the date/time, brief description and reason as to why they were refused could be recorded. Mr Byatt also confirmed that the CCTV system would also provide supporting evidence for any refusal.

4. THE APPLICANT'S CASE

The applicant's representative, Mr Byatt presented his case, and thanked the Licensing Committee for allowing them to put their case forward for the application for a premises licence to sell alcohol at Britlita, 60 Loke Road, King's Lynn.

He explained that they could empathise and understand the concerns shown regarding another establishment selling alcohol and appreciated all the negative aspects of the irresponsible consumption of alcohol currently portrayed. However, the application would be submitted as follows:

Under the Licensing Act of 2003, an application can be made for a premises licence to sell alcohol and as part of the application; the applicant must demonstrate how they intend to carry this out responsibly. The applicant had followed all of the statutory procedures with regard to his application, having submitted his application to the Borough Council, notifying interested parties

and responsible authorities of his intentions. In support of their application, the following facts were highlighted by Mr Byatt:

- The premises was that of a grocery store. Its main sales being food and other items. Although alcohol would be sold, it would not be the main contributor to sales i.e. it was not an off licence.
- The hours applied for were not unreasonable. Times applied for were less than other licensed establishments located within the vicinity. The closing hours were 22.00hrs.
- The applicant had identified measures he intended to take to promote the licensing objectives i.e. the Designated Premises Supervisor would have a currently nationally recognised qualification in the sale of alcohol, all the alcohol stocked would be placed where it could be clearly monitored and secured against theft, the premises would be secured against unauthorised entry, there would be an age verification scheme (Challenge 25 policy) in operation together with a “refusals and incident book”. Any purchases of alcohol would be for consumption away from the premises and customers would not be allowed and would be actively discouraged from consuming their purchases in or near the immediate vicinity of the premises. CCTV would be installed and in operation with recordings available to the police upon request.
- The applicant had co-operated fully with the police and had agreed to the implementation of all of their recommendations.
- There were no concerns or representations submitted by the Council's Environmental Nuisance Team (CSNN – who do not support the claim that in granting the licence, anti social behaviour, nuisance and litter would increase).
- The premises had been previously licensed for the sale of alcohol for consumption both on and off the premises until 2.30am.

As part of the application process, there had been an opportunity for interested parties, local businesses and local residents and responsible authorities to submit representations against the grant of the licence. Under the Licensing Act 2003, the representations must be relevant and based against the promotion of the licensing objectives. There had been a number of representations received from interested parties, some of which were deemed to be relevant.

Mr Byatt, re-emphasised to the Licensing Committee that there were no representations received or concerns shown by the Environmental Nuisance Team (CSNN). The recommendations received from the police had all been agreed by the applicant and implemented. It was therefore assumed that the police deemed the application as being sufficiently rigorous.

Under the Licensing Act of 2003, it stated that representations from interested parties must not be “irrelevant, vexatious or frivolous”. The representations that have been received were based around the negative impact that was currently perceived from the sale of alcohol in the area. There had been no evidence to support claims that suggested that crime disorder and nuisance would increase as a result of the applicant’s trading activities. The majority of representations were believed to be extremely subjective.

Mr Byatt also explained that they were concerned about a petition, which had been circulated to the extent of involvement of a neighbouring competitive licensed establishment. Information had been received that the shop hosted the petition and actively encouraged all customers to add their support to the campaign. There were signatories who resided in North Wootton, Ingoldsthorpe, Great Bircham and Pott Row. He stated that they believed this to be clearly vexatious and throw considerable doubt over the credibility of the petitions intentions.

There may be a number of existing alcohol retailers who were genuinely causing concern to the local community and these irresponsible retailers should be dealt with accordingly. There were mechanisms within the Licensing Act 2003 to deal with these retailers in the form of reviews. The applicant’s application should not be disadvantaged for the failings of other retailers and as long as the applicant could demonstrate that he could support the promotion of the licensing objectives and retail alcohol responsibly then that should be the main matter for consideration by the Licensing Committee. The application should be judged on its individual merits and not be judged by the irresponsible actions of a small number of retailers and unfounded assumptions.

In conclusion, Mr Byatt thanked the Licensing Committee for allowing them to put their application forward and wanted to assure them that if they were minded to grant the licence, the sale of alcohol would be carried out responsibly in full cooperation with the responsible authorities.

Questions to the applicant

In response to a question raised by Councillor D J Collis as to the extent of coverage that the CCTV cameras would provide, Mr Byatt explained that the CCTV cameras would be installed accordance with police specifications and would cover all the main entrances and cash till. It was clarified that there would be no cameras situated outside the shop.

Councillor D J Collis questioned how the applicant could demonstrate that he would be able to maintain good order in the immediate vicinity of the premises. Mr Byatt explained that if alcohol was purchased and consumed outside the premises, the person/people in question would be asked to move on.

Councillor D J Collis also raised concern in relation to the number of staff members who would have the appropriate qualification to supervise the supply and sale of alcohol. The Licensing Manager clarified that there could only be one designated premises supervisor who must hold a personal licence. Every

supply of alcohol under the premises licence must be made or authorised by a person who held a personal licence. It was confirmed that there would be 3 members of staff employed at the premises. The Licensing Manager further clarified that it was not necessary for the designated premises supervisor to be at the premises all the time; it was perfectly legal for them to authorise another member of staff to supply and sell alcohol, similar to the arrangement if a publican went away on holiday.

Councillor Bird queried the statement made by Mr Byatt in that the premises was that of grocery store with its main sales being food and other items and that alcohol would not be the main contributor to sales. He questioned the contraindication given the significant capital investment that had been made in order to comply with the conditions and whether it would make it viable. In response, Mr Byatt stated that the applicant wished to have the facility to sell alcohol in order to be competitive with other outlets and was also aligned with his business model.

Councillor Bird also requested clarification as to the fact the premises had been previously licensed for the sale of alcohol until 2.30am. The Licensing Manager explained that the premises was previously licensed as the North End Coffee Shop, and technically and from a legal perspective the licence could be reinstated as it was still in existence provided it reverted back to the layout on the approved plans.

5. OTHER PERSON'S CASE

Councillor D J Collis, on behalf of the local residents, presented his case and explained that following a meeting of residents at Loke Road, it was agreed that he should present their views in respect of the objection to the application for an off licence for Britlita, 60 Loke Road, King's Lynn. Local residents were in attendance today but they did not wish to formally speak.

Councillor D J Collis wished to make it clear that residents had asked him to stress that there was no malice expressed towards the applicant and that they wished him well in general aspects of the business but that the application for a licence did raise concerns. He explained that there was a different view in relation to the petition than that expressed by Mr Byatt. A substantial number of residents had signed a petition to raise objections to the granting of the licence in accordance with the 2003 legislation, namely:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children

Councillor D J Collis suggested that it would be beneficial and important for the Sub-Committee to carry out a site visit so that they have a clear understanding of the geography of the area and appreciate the location of the shop to residential properties and the children's play area and recreation ground.

The Chairman explained that the Sub-Committee had received details of such a request prior to the hearing and had given it due consideration, however they did not consider there were sufficient anomalies to warrant a site visit. The floor plan clearly set out the layout of the premises. Councillor D J Collis explained that there was no objection to the internal layout of the premises; it was small and appropriate for the business. The concern was the impact of the premises being located in what was a fundamentally residential area.

The Licensing Manager explained that a number of photographs had been taken of the premises and its location, including that of the play area, which may prove helpful to the Sub-Committee Members. Councillor D J Collis therefore explained with the aid of the power point slides, the photographs which were displayed.

In relation to crime and disorder, Councillor D J Collis stated it was considered that an additional outlet for sales of alcohol in a small area was yet another opportunity for crime and anti social behaviour. This was not just the views of residents but was included as part of the report. Outlets already existed at either end of Loke Road and an additional one in the middle would probably create further problems. It was appreciated that the Police had not objected to the application on the basis that the applicant had agreed to abide by appropriate conditions outlined on page 31. However the residents were concerned about the behaviour of the customers outside the shop, over which the applicant would have little control. If problems did occur outside the shop, and staff had to remonstrate with the individuals concerned, it was not known what would then happen inside the shop.

In relation to public safety, residents were already experiencing unsavoury behaviour in the area. The residents fear that customers purchasing alcohol from the shop may well form an obstruction to the normal use of the pavement. It would also present further problems with the parking of additional vehicles in the vicinity of the shop and reducing the road width available to passing traffic.

In relation to public nuisance, behaviour of those consuming alcohol was likely to prevent the quiet enjoyment of the residents in their homes. Additionally the window displays in the shop were dominant in a predominantly residential area as to offend the residents with an overbearing type of display. You could not see in or out of the shop.

In relation to the protection of children from harm, there was already an issue in the area with a children's play area being located close to the premises, which was part of the recreation area. Drinking took place within the area and there had been evidence of older customers purchasing unauthorised alcohol on behalf of younger children. Residents took the view that the additional outlet would increase the problems. Litter in the area was a continual problem with local people and Borough employees being faced with an ongoing task of clearing the offending items.

In conclusion, Councillor D J Collis stated that residents wished to thank the Panel for the opportunity and patience in presenting their objections to the application and trust that they would be given full consideration.

Questions to Councillor D J Collis

In response to questions raised by Mr Byatt, Councillor D J Collis stated that he had no evidence provided from the police to back up his claim that over 18 year olds were purchasing alcohol for under 18's. Mr Byatt suggested that the police would have details on a log of any such events. He also confirmed that there was no permanent CCTV covering the play area but the mobile CCTV vehicle was used on occasions. In relation to concerns over additional litter, Mr Byatt questioned whether the CSNN Team had raised any concerns. Councillor D J Collis explained that additional regular litter picking was carried out in the area in both the morning and afternoon by the Borough Council.

The Licensing Manager referred to Mr Byatt's submission in relation to the way the petition had been circulated. Mrs Perry stated that the petition had been at her house and she had also sought signatures from residents. Councillor D J Collis stated that Mrs Perry had been in charge of the petition at all times and covered the local area to gather signatures, it had not situated in any other local licensed outlet.

In response to a question from Councillor Bird as to why local residents found the shop displays offensive, Councillor D J Collis stated residents found them dominant and over-powering.

Mr Byatt stated that he had on good authority (a witness) that the petition was placed in a neighbouring competitive licensed establishment.

6. SUMMING UP

Other Persons

Councillor D J Collis, on behalf of residents summed up his case and stated that a honest application had been submitted and the residents had no problems with the applicant, however they did feel that life in their community would not be enhanced by a further outlet selling alcohol. Problems already existed in the area and there were concerns with the close proximity of the premises to the children's play area and recreation ground. The premises was also located in a primarily residential area.

Councillor D J Collis explained that he understood the applicant's difficulties in making the business successful; there had been previous difficulties experienced in making the premises a viable business.

There were concerns with issues of crime and disorder, public safety, public nuisance and the welfare of children. Many residents had lived in the area for a number of years and had experienced difficult times.

In conclusion, Councillor D J Collis stated that he strongly believed that an additional premises selling alcohol would lead to deterioration in the living environment.

Applicant

Mr Byatt, on behalf of the applicant, summed up his case and explained that the applicant had followed all the required procedures as stated in the Licensing Act 2003. The application was for a convenience store, primarily selling food and was not for an off licence but the supply of alcohol would help enhance their competitiveness. The applicant had clearly identified how they were going to promote the licensing objectives and no concerns have been shown by any of the responsible authorities including the police. He stated that they strongly believed the representations received had been mainly based on speculation. There had been no evidence produced in relation to the details and number of anti-social behaviour incidents. The applicant was well aware of the penalties he could incur in selling alcohol irresponsibly and therefore it was not in his interest to do so. He had made a significant investment and improvements to the premises including colourful and tasteful marketing. There were other shops in the vicinity which had posters and stickers on their premises.

In conclusion, Mr Byatt requested that the Panel be minded to grant the application.

7. OUTSTANDING MATTERS

The Licensing Manager addressed the Sub-Committee and advised that they had to be satisfied that the objections were relevant based on the four licensing objectives.

In relation to crime and disorder, the Police were the primary agency and their concerns had been outlined and subsequently the conditions had been agreed to by the applicant. It was for the Sub-Committee to determine how much weight they attached to the issue of parking and the window display in relation to the public nuisance licensing objective. He highlighted that the premises would still be able to trade even if the Sub-Committee refused the application.

He therefore requested that the Licensing Sub-Committee consider the application, the report and take such steps as it considers necessary for the promotion of the licensing objectives. The steps were:

- a) To grant the licence under the terms and conditions applied;
- b) To grant the licence with additional conditions that the Sub-Committee considers necessary for the promotion of the licensing objectives;
- c) To reject all or part of the application.

The Sub-Committee were reminded that reasons for its decision must be given as both the applicant and objector had a right of appeal against that decision to the Magistrates' Court.

The Legal Advisor addressed the Sub-Committee and advised that they had to determine whether they considered the petition to be relevant or vexatious and frivolous. She also referred to the suggestion that the petition had involved a neighbouring competitive licensed establishment. The issue of anti-social behaviour had also been raised by residents. Consideration should also be given to whether in granting the licence, it would have an accumulative effect and be the “straw that broke the camel’s back”. No evidence had been produced in relation to anti-social behaviour/crime and disorder. The residents’ views were not supported by the Police or CSNN.

8. REACHING A DECISION

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had advised the Sub-Committee in relation to the application, relevant licensing objectives and offered further advice on what was considered to be vexatious and frivolous.

9. DECISION

The Chairman read out the decision as follows:

Decision

The Panel have decided to grant the licence and impose the conditions as identified in the report.

Reasons for Decision

The Panel took into consideration the report of the Licensing Manager, the submissions put forward by the applicant and their representative, Mr Byatt and the representations put forward on behalf of the objectors by Councillor D J Collis.

The Panel also have had regard to the Council’s Licensing Policy, the licensing objectives and Guidance issued under Section 182.

The Panel took particular note of the following in evidence:

- That the Police and Community Safety & Neighbourhood Nuisance Team did not object to the grant of the licence.
- The proximity of the children’s play area.
- The concerns of the residents represented here today.
- The applicant has accepted all the conditions identified by the Police.

However, the Panel felt that there was not adequate grounds in relation to the licensing objectives to do anything other than grant the licence.

The Panel would like to remind both the applicant and objectors that there is a review process if any problems are identified with the operation of the licence.

The Meeting closed at 11.50am