

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Tuesday 29th January 2013 at 1.30pm
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor R Groom (Chairman) Councillor M Hopkins Councillor C Sampson
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Cara Jordan
Premises:	Café by the Tree, 58 London Road, King's Lynn
Applicant:	Mrs Lolita Dambrauskiene
Applicant's Representative:	Mr Byatt – Licensed-Inn-Tuition
Other Persons:	No parties were present

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 the Café by the Tree, 58 London Road, King's Lynn, PE30 5QH. He introduced the Sub-committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Cara Jordan. The applicant, Mrs Dambrauskiene and her representative, Mr Byatt introduced themselves. There were no 'other persons' present at the hearing.

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 a premises licence was required under the Licensing Act 2003 (the 'Act') 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

The Application

Mrs Lolita Dambrauskiene had made an application under Section 17 of the Act 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 Café by the Tree to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Sale of Alcohol by Retail: (For consumption on the premises only)	Monday to Thursday:	5pm to 9pm
	Friday:	5pm to 11pm
	Saturday:	12 noon to 11pm
	Sunday:	12 Noon to 9pm

Mandatory Conditions

The premises licence, if granted would be subject to the following mandatory conditions:

- Under Section 19(2) of the Act, no supply of alcohol shall 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.
- Under Section 19(3) of the Act every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- In relation to the sale of alcohol, the responsible person shall take all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. An irresponsible promotion means an activity carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children.
- The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

- The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
- The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply 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.
- The responsible person shall ensure that where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-

beer or cider: ½ pint;
gin, rum, vodka or whisky: 25 ml or 35 ml; and
still wine in a glass: 125 ml;

And that customers are made aware of the availability of these measures.

Conditions Consistent with the Operating Schedule

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

- The sale of alcohol shall only take place when sold as ancillary to the provision of a main meal and that meal shall be for consumption on the premises. Notices to that effect will be displayed within the premises.
- No sale of alcohol shall take place unless there is at least one personal licence holder present on the premises at the time of sale.
- There must be clear and legible polite notices displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents.

Representation from Responsible Authorities

Section 13(4) of the Licensing Act 2003 defined the 'responsible authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

There are no representations from any of the responsible authorities to consider.

Representations from 'Other Persons'

As well as responsible authorities, any other person can play a role in a number of licensing processes under the Licensing Act 2003. This included any individual, body or businesses that were entitled to make representations to applications. Representations made must relate to the licensing objectives.

There was one representation from a local resident to consider. A copy of the letter had been attached to the report at Appendix 2.

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. The Public Notice appeared in the Lynn News on Tuesday 18th December 2012 and should have been displayed on the premises until the 9th January 2013.

Plans

A plan of the premises had been attached at Appendix 3 and a location plan had been attached at Appendix 4.

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

The Licensing Manager reminded the Sub-committee that the current Statement of Licensing Policy was approved by full Council on the 25th November 2012 and the following extracts may be relevant to the application:

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.

18.0 **Conditions**

- 18.1 The Borough Council will not impose conditions 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, or is offered in the applicant's Operating Schedule. Any conditions will be proportional and necessary to achieve the Licensing Objectives.

Guidance issued under Section 182 of the Licensing Act 2003

Under Section 4 of the Licensing Act 2003, licensing authorities must have regard to guidance issued under Section 182. The current guidance was issued by the Home Office in October 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 Subcommittee:

Licence Conditions – General Principles

- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will", is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff,

- but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. 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

2.18 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.

2.19 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. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.20 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be

aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.24 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. 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. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous, vexatious and repetitious representations.

Determining Applications

9.1 When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with those regulations.

Where no representations are made

9.2 A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions.

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.
- 9.9 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 five 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. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities in the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

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.

Consistency with steps described in the operating schedule

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

Imposed Conditions

- 10.8 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.
- 10.9 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

- 10.10 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. 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.

Questions to the Licensing Manager

There were no specific questions to the Licensing Manager.

4. THE APPLICANT'S CASE

The applicant's representative, Mr Byatt presented the case on behalf of the applicant and thanked the Committee for allowing them to present their application for a premises licence. He explained that the Café by the Tree was a small restaurant and not designed to be a "bar" and there was no intention for it to become a drinking establishment. The premises was a former Sub Post Office and could currently accommodate approximately 20 covers/diners. There was also a small outdoor area which could sit a maximum of 8 people and would be primarily used during the summer months.

The application as applied for was for the sale of alcohol by retail, for consumption on the premises only and sold as ancillary to the provision of a main meal.

Mr Byatt explained that the applicant had considered carefully the operating times that she was applying for and highlighted that there was no provision to sell alcohol at lunch times. The application was seeking for the sale of alcohol (for the consumption on the premises only) on Monday to Thursday from 5pm to 9pm, Fridays from 5pm to 11pm, Saturdays from 12 noon to 11pm and Sundays from 12 Noon to 9pm. Mr Byatt stated that these times were reasonable, particularly when comparing them with other premises that may have an impact on the late night economy. He also reemphasised that the sale of alcohol would only take place when sold as ancillary to the provision of a main meal and that the meal would be for consumption on the premises. No application had been submitted for the provision of late night refreshment as the premises would close at 9.30pm on a Sunday to Thursday and at 11.30pm on a Friday and Saturday evening. His client had given consideration to the locality of her premises and had submitted a reasonable request with regard to opening times. The premises did not provide take-away food.

Mr Byatt stated that his client had been somewhat perturbed when she had read the letter of representation from a local resident because she could not understand how it related to her premises. He referred to the letter's content which had stated "my reasons for being against the sale of alcohol was because of the raised noise levels, music and partying revellers, drunk and disorderly behaviour (already witnessed) and urinating and vomiting". Mr Byatt explained that his client had never held a party and had no facilities

(such as a sound system) to play music. Any drunk and disorderly behaviour that may have already been witnessed could not specifically be attributed to the Café by the Tree and may well have been from people leaving town or other licensed premises. This also applied to any incidents of urinating and vomiting referred to where the objectors lived. Mr Byatt referred further to the letter of objection which had stated that “we feel the road is quite busy and dangerous for revellers, plus there were no parking spaces and also our garden is frequently used as a dump for rubbish and half eaten kebabs” and in doing so, stated that his client did not sell kebabs and therefore such incidents could not be attributed to her premises. The road and car parking issues were not a consideration under the Licensing Act 2003 and were not in the direct control of the applicant.

Mr Byatt explained that he had hoped to discuss and resolve any issues by way of mediation but no contact with the objectors had been established, despite attempts. He had, however, managed to talk to the owners of the shop which was directly attached to the objectors residence who had informed him that they had no such experiences as described in the letter of objection and had in fact described the premises (The Café by the Tree) as “exemplary”.

Questions to the applicant

In response to a query raised by the Licensing Manager (referring to page 30 of the Agenda – premises plan), Mr Byatt confirmed the location of the outside area which had been referred to. He also confirmed that no music was played but occasionally a television was on at the premises. The applicant confirmed that currently the premises closed at 8pm.

Councillor Sampson explained that he had taken the opportunity on his way in to view the outside of the premises and sought clarification as he believed that the sign above the door stipulated that the premises was a “café and a take-away”. The applicant did confirm that on occasions she did supply food to take away. Mr Byatt apologised for any confusion that he may have caused in reference to his earlier statement and explained that there had been no intention to mislead the Committee. Councillor Sampson suggested that given that take-away food was provided on occasions, there may well be a temptation to supply alcohol that would be consumed off the premises. The Licensing Manager clarified that if granted, a condition would be attached to the licence to ensure that the sale of alcohol would only take place when sold as ancillary to the provision of a main meal and that meal would need to be for consumption on the premises. Mr Byatt highlighted that the applicant had not applied for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am).

The Legal Advisor confirmed that she had no questions for the applicant.

5. OTHER PERSON’S CASE

As there were no other persons present, the Licensing Manager referred to the letter of objection that had been received (page 29 of the Agenda) in relation

to drunk and disorderly behaviour and advised that there was no evidence to suggest that this could be attributed to customers from the applicant's premises. He also advised that it was for the Sub-committee to determine how much weight that they attached to the letter when considering their decision.

6. SUMMING UP

Applicant

Mr Byatt, the applicant's representative stated that he had no further comments but requested that the Sub-committee be minded to grant the application as applied for.

7. OUTSTANDING MATTERS

The Licensing Manager addressed the Sub-committee and requested that having regard to the representation received, they consider the application, the report and take such steps as they considered to be appropriate for the promotion of the licensing objectives. These steps were:

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

The Sub-committee were reminded that full reasons for their decision must be given as both the applicant and other persons had a right of appeal against that decision to the Magistrates' Court.

The Legal Advisor addressed the Sub-committee and concurred with the comments made by both the Licensing Manager and the applicant's representative in terms of the letter of objection that had been received. She referred to Mr Byatt's evidence in which he had explained that he had visited and sought the opinion from an adjacent business and advised that in order for the Sub-committee to have been able to consider this evidence, it should have been submitted prior to the hearing in the form of a letter of support. The Legal Advisor also advised that the Sub-committee should consider the application with the view to promoting the four licensing objectives and that their starting point should be to consider whether they were minded to grant the application. If for any reason the answer to this question was "no", the Sub-committee should give consideration to refusing the application or granting the application with any appropriate conditions.

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, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered no further advice to the Sub-committee in relation to their decision but had assisted with the formulation of their reasons.

9. PRELIMINARY DECISION

The Chairman read out the preliminary decision and reasons for the decision as follows:

We have read the report of the Licensing Manager and letter of objection. We have listened to the evidence today, including information provided by the applicant through her agent, Mr Byatt.

The objector did not attend the hearing.

There were no representations from any responsible authorities.

The applicant runs a small restaurant and makes this application to sell alcohol with food. The operating schedule suggests three conditions which we endorse as appropriate.

We have considered the letter of objection. We find nothing within this letter which connects the behaviour described in the letter of objection with the premises. We are satisfied that the licensing objectives are met.

We therefore grant the application with the mandatory conditions and those conditions outlined at page 5 and 6 of the Licensing Manager's report which are consistent with the operating schedule as outlined below:

- (a) The sale of alcohol shall only take place when sold as ancillary to the provision of a main meal and that meal shall be for consumption on the premises. Notices to that effect will be displayed within the premises.
- (b) No sale of alcohol shall take place unless there is at least one personal licence holder present on the premises at the time of sale.
- (c) There must be clear and legible polite notices displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents.

Comments on the Decision

At the invitation of the Chairman, the Licensing Manager confirmed he had no comments on the preliminary decision.

10. DECISION

The Chairman therefore confirmed the decision and the reasons as outlined above. He reminded all parties, including the other persons, had a right of appeal to the Magistrates Court within 21 days.

The Meeting closed at 2.32pm