

LICENSING SUB-COMMITTEE 5

Tuesday 11th October, 2005 at 10.00am
in the Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Taylor (Chairman)
Councillors Bradney and Mrs Coulter

Officers

The Director of Law and Property – Morning session only, Mr K Edwards (Principal Solicitor) – Afternoon session only and Mr Jewkes (Directorate of Law and Property)

30

MINUTES

RESOLVED

That the minutes of the meeting of the Sub-Committee held on the 28th September, 2005, be approved as a correct record and signed.

31

DECLARATIONS OF INTEREST

No member made a declaration of interest in accordance with the Members' Code of Conduct.

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APOLOGY FOR ABSENCE

An apology for absence from the meeting was submitted on behalf of Councillor Ms Craigie.

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APPOINTMENT OF SUBSTITUTES FOR THIS MEETING OF THE SUB-COMMITTEE

It was noted that Councillor Mrs Coulter had been appointed to serve as a substitute for Councillor Ms Craigie for this meeting of the Sub-Committee only.

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APPLICATION TO VARY A PREMISES LICENCE, CURRY COTTAGE, 42 WOLVERHAMPTON STREET, DUDLEY

This item was withdrawn from the agenda.

35

APPLICATION TO VARY A PREMIES LICENCE, THE ROSE OF KASHMIR, 179 -180 WOLVERHAMPTON STREET, DUDLEY

A report of the Director of Law and Property was submitted on an application received from Mr F Rasul, to convert an existing licence into a premises licence and vary the premises licence simultaneously in respect of the Rose of Kashmir, 179 -180 Wolverhampton Street, Dudley.

Following introductions, the Legal Advisor outlined the procedure to be followed.

The licensee, Mr Rasul, was present at the meeting along with his representative, Mr Martin.

Mr C Phillips, Senior Licensing Clerk, presented the report on behalf of the Council. In addition to the written report, Mr Phillips informed the meeting that, through Mr Martin, the applicant had expressed his willingness to accept a reduction in the proposed hours of opening of his restaurant from Monday to Thursday but that it was still his wish to remain open until 3am on Fridays and Saturdays.

Mr A Allman, Senior Environmental Health Officer (Food and Occupational Safety), then presented his evidence as set out in Appendix 2 to the report, stating that his main objection to the application for extended hours was on the grounds of the potential public nuisance to nearby residents caused by patrons leaving the premises late at night either on foot or in taxis. He added that a resident living close to the premises had recently made a complaint to Environmental Health department that taxis were sounding their horns outside the restaurant in the early hours of the morning in order to alert customers inside to their arrival.

In response to a question from Mr Martin, Mr Allman confirmed that he had recommended that the Sub-Committee restrict the opening hours of the restaurant to those specified under the current licensing regime, on the grounds that public nuisance could result from any extension to these hours.

Plans of the building were circulated at the meeting.

Mr Martin then presented the case on behalf of the applicant. He stated that the restaurant was a well established business, having been open for twelve years, eight of which were under Mr Rasul's management, in which time no complaints had been made to the police concerning noise nuisance or any other problem relating to the premises. The police had lodged no objection to the application. In respect of the complaint concerning noise from taxis sounding horns, Mr Martin said that the applicant refuted the allegation that the noise was made by a taxi waiting

outside his restaurant, saying that the noise came from people visiting nearby residents. Further to this, Mr Rasul used just two taxi providers and arrangements were in place whereby waiters from his restaurant looked out for taxis which had been ordered and informed the waiting customer of their arrival, rather than drivers sounding their horns.

In response to a question from the Director of Law and Property, Mr Martin confirmed that the applicant did not wish to provide the sale of alcohol for consumption off the premises and that he did wish to provide takeaway meals after 11pm. The sections of the application form dealing with these aspects of the licence had been filled in incorrectly. The Director of Law and Property explained that the Sub-Committee would make their decision on these two aspects during the course of their deliberations.

In response to a question from Mr Phillips, Mr Martin confirmed that the applicant was a resident of Aston, Birmingham and that he was currently in the process of obtaining a personal licence through the relevant authority in that area.

After further questioning of the applicant, the Chairman offered the parties the opportunity to sum up, prior to their withdrawal.

The Sub-Committee having made their decision and, following a short adjournment, the parties were invited to return and the Chairman then outlined the decision and the reasons for the decision.

Accordingly, it was

RESOLVED

That the application received from Mr F Rasul, to convert an existing licence into a premises licence and to vary the premises licence simultaneously in respect of the Rose of Kashmir, 179 - 180 Wolverhampton Street, Dudley be approved, subject to the following terms and conditions and based on the reasons indicated:

Variation of Premises Licence is approved for the revised hours applied for, namely

Sale of Alcohol and Provision of Late Night Refreshment

Monday – Thursday	10.00 – 00.00
Friday – Saturday	10.00 – 03.00
Sunday	10.00 – 11.30

Conditions

1. All conditions set out as in the operating schedule.
2. All exit doors within the premises shall have signs asking customers to leave the premises quietly and respect local residents and their premises.
3. Signs in the car park shall state: - no sounding of horns and to leave the car park quietly.

Reasons for decision

The Sub-Committee is of the opinion that the hours set for the sale of alcohol and late night refreshment should provide an opportunity for greater flexibility and in turn a reduction in customers leaving the premises in large numbers at a set time with consequent nuisance and associated anti-social behaviour to local residents. This approach is consistent with the principles contained within the licensing legislation and our licensing policy.

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APPLICATION FOR GRANT OF A PREMIES LICENCE, THE FAMOUS HOUSE TAKE-AWAY, 80 HIGH STREET, PENSNETT, BRIERLEY HILL

A report of the Director of Law and Property was submitted on an application received from Mrs Sui Ha Lee, for the grant of a premises licence in respect of the Famous House Take-Away, 80 High Street, Pensnett, Brierley Hill.

Mr C Phillips, Senior Licensing Clerk, reported that neither the Applicant nor the objectors to the application were in attendance at the meeting and explained that the Sub-Committee could either defer the application and hear it at another meeting or hear the application in the absence of the parties involved.

In view of the failure of the applicant and the objectors to the application, Mr and Mrs Huxley, to attend the meeting, the Sub-Committee agreed to hear the application in their absence.

Mr Phillips presented the report on behalf of the Council.

Referring to Appendix 2 to the report submitted, Councillor Mrs Coulter expressed concern that whilst the objector's letter complained that the smell emanating from the premises had become detrimental to the quality of life of nearby residents, no representations concerning the application had been received from Environmental Health.

Mr Edwards advised that, unless the Sub-Committee was satisfied that the four licensing objectives set out in the Licensing Act 2003 would not be met, there were no legal grounds to refuse the application.

At this juncture a short adjournment was called, in order that information could be sought from Environmental Health concerning any complaints of noise and smell disturbance made against the premises by Mr and Mrs Huxley and any subsequent action taken as a result. Upon obtaining clarification, Mr Phillips reported that Mrs Huxley had made three complaints in the last twelve months, as a result of which Environmental Health had issued her with 'log sheets' on which to document disturbance when it occurred. None of these sheets had been returned and as a result no objections had been made by Environmental Health officers. They had been in contact with the applicant in the past concerning the problem of excess grease created by cooking on the premises. This problem had been resolved under Environmental Health legislation and was no longer an issue.

The Sub-Committee having made their decision and, following a short adjournment, Mr Phillips was invited to return and the Chairman then outlined the decision and the reasons for the decision.

Accordingly, it was

RESOLVED

That the application received from Mrs Sui Ha Lee, for the grant of a premises licence in respect of the Famous House Take-Away, 80 High Street, Pensnett, Brierley Hill be approved, subject to the following terms and conditions and based on the reasons indicated:

Grant of Premises Licence is approved

Provision of Late Night Refreshment

Monday – Saturday	17.00 – 00.00
Sunday	Closed

The Sub-Committee recommends that the noise from the extractor fan unit be monitored by Environmental Health Officers and that necessary action be taken to reduce any excessive noise.

Reasons for Decision

The Sub-Committee were satisfied that the hours granted for the sale of late night refreshments would not cause undue nuisance to residents living within the vicinity. This approach is consistent with the principles contained within the licensing legislation and our licensing policy.

A report of the Director of Law and Property was submitted on an application received from Restaurant Management and Marketing on behalf of Mr M Chowdhury, for the grant of a premises licence in respect of the Chatney's Restaurant, 47 High Street, Lye, Stourbridge.

The applicant, Mr Chowdhury, was absent from the meeting. It was reported however, that Ms D Nellany, Food and Occupational Safety Manager, was in attendance and that she had some representations to make concerning the application.

Mr Phillips, Senior Licensing Clerk, presented the report on behalf of the Council and pointed out an error in the text, which said that the applicant had a current Justices On Licence when in fact this was not the case. He also added that the conditions imposed on the premises' current planning permission allowed it to remain open only until 23.00 and that consequently, should the Sub-Committee approve the application and allow the applicant to open after this time, the appropriate planning consent would need to be sought by the applicant.

Plans of the building were circulated at the meeting.

In response to a question from Ms Nellany, the legal Advisor confirmed that in the applicant's absence, it was permissible for her to give a professional opinion on the likely effect of the extended hours and residents living within the vicinity.

Ms Nellany then presented her evidence, stating that although the applicant was not applying for a licence to sell alcohol, alcohol was to be consumed on the premises by diners who took their own drinks into the restaurant and, as such, the potential for public nuisance was still present. She added that no provision for the prevention of public disorder was made in the operating schedule and that the kind of unregulated drinking which could occur on the premises during the extended hours of opening could lead to problems with anti social behaviour and noise nuisance.

Concern was expressed that should the applicant choose to provide take-away food, patrons would be arriving and leaving the premises late at night either on foot or in vehicles. In relation to this Mr Phillips explained that the application form received specified that food would only be provided for consumption on the premises and that should the applicant wish to provide take-away food in future, an application to vary any premises licence that was granted would have to be submitted.

In response to questions from Members, it was reported that the premises had been operational as a restaurant since 1995 and under the current management since April 2005. The restaurant could accommodate between thirty and forty diners.

The Sub-Committee having made their decision and following a short adjournment, the parties were invited to return and the Chairman then outlined the decision and the reasons for the decision.

Accordingly, it was

RESOLVED

That the application received from Mr M Chowdhury, for the grant of a premises licence in respect of the Chatney's Restaurant, 47 High Street, Lye, Stourbridge be approved, subject to the following terms and conditions and based on the reasons indicated:

Provision of Late Night Refreshment

Hours approved as per application, namely: -

Monday – Thursday	23.00 – 00.00
Friday – Saturday	23.00 – 01.00
Sunday	23.00 – 00.00

Conditions

All conditions set out in the operating schedule, together with

1. That late night refreshments shall only be sold for consumption on the premises.

Reasons for Decision

That the Sub-Committee were satisfied that the hours granted for the sale of late night refreshment would not cause undue nuisance to residents living in the vicinity. This approach is consistent with the principles contained within the licensing legislation and our licensing policy.

The meeting ended at 4.20 pm.

CHAIRMAN