

LICENSING SUB-COMMITTEE 4

Tuesday, 5th December, 2006 at 10.00am
in the Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Donegan (Chairman)
Councillors Mrs Aston and Finch

Officers

Assistant Director Legal and Democratic Services (Legal Advisor) (am only), Principal Solicitor (Legal Advisor) (pm only), Licensing Officer, Mrs L Jury (am only) and Mrs K Farrington (pm only) (Directorate of Law and Property).

31 APOLOGY FOR ABSENCE

An apology for absence was received on behalf of Councillor Mrs Coulter.

32 APPOINTMENT OF SUBSTITUTE MEMBER

It was reported that Councillor Finch had been appointed to serve as a substitute for Councillor Mrs Coulter for this meeting only.

33 DECLARATIONS OF INTEREST

No member declared an interest in accordance with the Members' Code of Conduct in respect of any matter to be considered at the meeting.

34 MINUTES

RESOLVED

That the Minutes of the Meeting of the Sub-Committee held on 31st October, 2006 be approved as a correct record and signed.

35 APPLICATION TO VARY A PREMISES LICENSE, THE HASBURY INN, HAGLEY ROAD, HALESOWEN

A report of the Director of Law and Property was submitted on an application received from John Gaunt and Partners, Solicitors, on behalf of Wolverhampton and Dudley Breweries, to convert an existing licence into a premises licence and to vary the premises licence simultaneously, in respect of the Hasbury Inn, Hagley Road, Halesowen.

The Licensee, Mr Kenny, was in attendance at the meeting together with Ms Hughes, on behalf of Flint, Bishop and Barnett Solicitors.

Also in attendance were two objectors, whose written representations had been sent to the Sub-Committee members prior to the meeting.

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

Mrs J Elliott, Licensing Officer, presented the report on behalf of the Council.

Mrs Delores Nellany, Food and Occupational Safety Manager, Directorate of the Urban Environment, then commented on the content of Appendix 2 to the report submitted. She informed the Sub-Committee that the application had arisen due to the impending smoke free laws, which would come into force 1st July 2007. This law only permits smoking outside the premises or in a smoking shelter, which is not to be enclosed, therefore, not enabling the shelter to be insulated from noise breaking out. She stated that her main concern was from noise nuisance emanating from outside of the premises. She informed the Sub-Committee that previous complaints had been received from local residents in respect of noise from inside the premises and from patrons using the beer garden.

She concluded by stating that due to the premises being situated in a densely residential area, with the closest property being approximately only 10m metres away, and with the history of complaints as reported, she considered that, should the variation be permitted, there would be a significant increase in noise nuisance. Mrs Nellany then confirmed the location of the new al fresco area on the premises to the Sub-Committee.

In response to a question raised by the Sub-Committee in respect of the licensee complying with the conditions of the previously granted license, with regard to the use of a noise limiting device, Mrs Nellany confirmed that the premises had been visited by Environmental Health on two occasions but not since November last year. However, the noise limiting device would only apply to the front room of the premises and would not be effective if windows in the premises were opened.

In response, with regards to the new no smoking legislation, Ms Hughes questioned where customers would be able to smoke after 10.00pm if no provision was provided for them. She raised concerns that patrons would smoke outside the public house, on the pavement, where the licensee could not manage their behaviour. In consultation with the licensee, she stated that they would be happy to stop patrons from drinking outside after 10.00pm and would only allow patrons to go outside to smoke. This would hopefully reduce the time spent outside as the patrons would return inside the premises to finish their drinks. It was anticipated that large numbers would not be standing outside drinking at one time.

In response to a question raised by Ms Hughes regarding the complaints received, one of the objectors confirmed that he had been given log sheets to complete and Mrs Nellany stated that once the sheets were returned the problem would be followed-up but a visit to the premises would not be made until a third complaint had been received.

The objectors then presented their evidence to the Sub-Committee. Their main concerns related to the existing problem of noise nuisance from both inside and outside the premises. One objector stated that the noise nuisance from outside the premises mainly occurred during the summer months due to the use of the beer garden by patrons and their children. Excessive noise, offensive language and behaviour issues with unruly children resulted in residents having to keep their windows closed during these months. It was also reported that windows in the public house had been opened on occasions breaking the conditions of the previously granted application. It was noted that Environmental Health had written twice to the Licensee last year regarding this issue but that there was no evidence that restrictions had been complied with. It was considered that if a variation were granted, it would add to the existing problems, and the restrictions with regards to consuming alcohol outside the premises after 10.00pm, would not be enforceable.

In response, Ms Hughes stated that the application had only been made due to the impending new legislation, which had forced Mr Kenny to consider an area for patrons to smoke. Mr Kenny was happy to comply with the condition that alcohol was not to be consumed outside the premises after 10.00pm. It was considered that noise nuisance and behaviour would be easier to control if patrons could stay on the premises to smoke rather than wander onto the streets. The Licensee had recently invested a large sum of money in the premises so enforcing these restrictions would be in his best interest. With regard to the issue of open windows, Mr Kenny stated that due to the excessively hot summer this year, patrons had taken it upon themselves to open the windows. However, it was envisaged that this issue would be addressed now that the entertainment was to be held at the back of the public house where air-conditioning had recently been installed. He confirmed that the noise limiting device installed had not been adjusted since it was set when Environmental Health had last visited the premises.

In conclusion, Mr Kenny stated that, in an effort to comply with forthcoming new legislation, he would be happy to liaise with his neighbours with regard to any issues that may arise.

Members raised concerns regarding the issue of enforcing the condition that no alcohol would be consumed outside the premises after 10.00pm when staff were busy and it was suggested that door supervisors be employed to ensure that alcohol was not taken outside. Mr Kenny stated that he would be happy to look into this suggestion if the Sub-Committee felt it necessary.

In summing up their cases, Mrs Nellany and the objectors felt that the restriction to only allow customers to smoke outside the premises after 10.00pm and not consume alcohol would not be enforceable and, therefore, asked that the restrictions previously agreed by the Sub-Committee remain, in order to meet the licensing objection of preventing public nuisance.

In summing up the case for the licensee, Ms Hughes reiterated that the application had only been submitted due to the new 'no smoking' legislation which would be enforceable from 1st July next year, forcing the licensee trade to provide areas for smokers outside their premises. Mr Kenny had invested a substantial sum of money in the premises and would do his utmost to conform to legislation and be a 'good neighbour'.

In conclusion, it was considered that the supervision of patrons' behaviour could be undertaken by the licensee only if they were allowed to use the area provided outside his premises.

At the request of the Chairman, the respective parties withdrew from the meeting to enable a decision to be made.

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

Accordingly, it was

RESOLVED

That, following careful consideration of the information contained in the report submitted and the representations made at the meeting, the application received from John Gaunt and Partners, Solicitors, on behalf of Wolverhampton and Dudley Breweries, to vary a premises licence in respect of the Hasbury Inn, Hagley Road, Halesowen, be refused. The condition relating to the beer garden is extended to all outside areas of the premises and includes the clearing of customers.

Reasons for Decision

These premises are situated in a residential area in close proximity to private properties, the nearest being only 10 metres from the Public House. A large number of complaints in relation to noise nuisance have been received since 2002 and four complaints have been received this year. The condition preventing use of the beer garden imposed in 2005 has minimised nuisance from customers outside the premises and this nuisance is likely (to significantly) increase if we allow the outside areas to be used by customers after 10.00pm for smoking. This will, therefore, impact on our licensing objective relating to prevention of public nuisance.

36 APPLICATION FOR AMUSEMENTS WITH PRIZE MACHINES PERMIT, THE MEADOW LARK, DIBDALE ROAD, DUDLEY

It was noted that this item had been deferred to a future meeting.

37 APPLICATION FOR AMUSEMENTS WITH PRIZE MACHINES PERMIT, THE HARE AND HOUNDS, 252 HAGLEY ROAD, HALESOWEN

A report of the Director of Law and Property was submitted on an application made on behalf of Premier Automatic Machines in respect of the Hare and Hounds, 252 Hagley Road, Halesowen, for the grant of an amusements with prizes machines permit for three machines.

Mrs Lynda De Veer, the Licensee, was in attendance at the hearing.

Following introductions by the Chairman, Mrs J Elliott, Licensing Officer, presented the report on behalf of the Council.

In response to questions from Members and the Legal Advisor, Mrs De Veer clarified the intended position of the machines and confirmed that the machines would be visible from the bar. She also informed the Sub-Committee that the machines would be skill-based (although prize money could be won), football and golf oriented, with the possibility to link up to the internet to play between other establishments.

RESOLVED

That the application made on behalf of Premier Automatic Machines in respect of the Hare and Hounds, 252 Hagley Road, Halesowen, for the grant of an amusements with prizes machines permit for three machines, be approved.

38 APPLICATION FOR AMUSEMENTS WITH PRIZE MACHINES PERMIT, THE CLIFTON, BULL RING, SEDGLEY

A report of the Director of Law and Property was submitted on an application made on behalf of Gamestec in respect of the Clifton, Bull Ring Sedgley, for the grant of an amusements with prizes machines permit for five machines.

Representatives from Gamestec were not in attendance at the meeting.

Mrs J Elliott, Licensing Officer, presented the report on behalf of the Council.

RESOLVED

That the application made on behalf of Gamestec in respect of the Clifton, Bull Ring, Sedgley, for the grant of an amusements with prizes machines permit for five machines, be approved.

39

APPLICATION FOR THE VARIATION OF A CONSENT TO ENGAGE IN STREET TRADING – MR DERMOT MCGILLICUDDY

A report of the Director of Law and Property was submitted on an application made by Mr Dermot McGillicuddy, on behalf of LSD Promotions, for the variation of a consent to engage in street trading in Halesowen Town Centre.

Mr McGillicuddy was in attendance at the meeting.

Also in attendance were Mr S Perry, Town Centre Manager, Mr S Fitzpatrick, Chairman of Halesowen Chamber of Trade, Mr R Roberts, Street Trader in Halesowen and Mr M Dancer, owner of a High Street shop, who were to comment on representations set out in the appendices attached to the report submitted.

Following introductions, Mrs J Elliott, Licensing Officer, Directorate of Law and Property, then presented the report on behalf of the Council.

Mr McGillicuddy reported that the Farmers Market had been operating in the borough for four years and had proved to be very successful. He also commented that the variation of his permit to include crafts, hobbies, art, antiques, ceramic, fair-trade and the unusual, would greatly increase footfall to the town providing a wider and more interesting retail offer. He further reported that he had received great support from Mr Perry and Mr Fitzpatrick in relation to the existing farmers market and stated that he would like that support to continue in the future.

Mr McGillicuddy addressed the concerns expressed in writing, mainly in relation to the farmers market selling cooked sausages, burgers and samosas, by existing hot food retailers and stated that he wished to work positively with other street traders and retailers in the town. He stated that he had removed the market stall, that had been selling cooked sausages and burgers, but had decided to keep the samosa stall, as there was no direct clash in the town as no other premises had that type of food on offer and further stated that the stall had proved to be very popular in town. He reported that although he had not specified selling hot food on the original application, he was not sure whether he was in breach of the current licence. He confirmed that if it was agreed that he was in breach of the current licence, he would be happy to remove the hot food stalls from the market. At this juncture, Mrs Elliott confirmed that she was of the opinion that there would be a breach of the licence as he did not specify selling hot food on the application, but stated that this issue could be discussed with a view to adding the selling of hot food to the application, if the Sub-Committee agreed.

Although no objections had been received, in principle, to the variation of licence, to include selling crafts, hobbies, art, antiques and ceramics, concerns had been expressed by the Sub-Committee, and also referred to in the written objections, in respect of the unusual, as referred to in the report, being added to the licence. The Sub-Committee was of the opinion that LSD Promotions would be leaving themselves open for complaints from other street traders and retailers, as 'unusual' could mean a number of products.

The Chairman then asked Mr Fitzpatrick to clarify 'unusual'. In response Mr Fitzpatrick stated that it would be impossible to give specific examples of products because the range was too extensive and further stated that unusual to different people could mean different things. He continued to state that the market traders liked to sell handmade products, not always produced by themselves, on occasions. The market would sell handmade products from places such as India and South America.

Arising from the discussion held on this point, Mrs Elliott suggested that Mr Fitzpatrick submit a list of traders and products which they would be selling to Mr Perry in order to try and solve the problem of product clashes in the town. In response, Mr Fitzpatrick reiterated the problem of specifying what products would be on sale on the market, as the range of products would be too extensive and also indicated that he was unlikely to be in a position to know exactly what was to be proposed to be on sale until the day of the market or very close to it.

Following further discussion, Mrs Elliott suggested that the Sub-Committee consider granting Mr Fitzpatrick a licence for six months in order to monitor the success of the market. In response, Mr Fitzpatrick confirmed that if the Sub-Committee agreed a six month licence, he would be happy with that decision.

Discussions were then directed back to the concerns in relation to the market stall selling samosas. The main concern was the pungent spicy fumes emanating from the stall and wafting into retail shops in the town. The stall had already been re-sited following similar complaints and it was suggested that a suitable alternative site be located.

Following the summing up of their respective cases, the parties withdrew so that the Sub-Committee could come to a decision on the application.

The Sub-Committee having made their decision, the respective parties were invited to return and the Chairman then outlined the decision.

RESOLVED

1. That the application submitted by Mr Dermot McGillicuddy, on behalf of LSD Promotions, for the variation of a consent to engage in street trading in Halesowen Town Centre, be approved for a period of six months.
2. That, arising from the discussions held with Mr McGillicuddy at the meeting, approval be given to the addition to the consent to engage in street trading of the sale of cooked speciality sausages and samosas.

40

APPLICATION FOR THE RENEWAL AND VARIATION OF A CONSENT TO ENGAGE IN STREET TRADING – MR DERMOT MCGILLICUDDY

A report of the Director of Law and Property was submitted on an application made by Mr Dermot McGillicuddy, on behalf of LSD Promotions, for the renewal and variation of a consent to engage in street trading in Dudley Town Centre.

Mr McGillicuddy was in attendance at the meeting.

Mrs J Elliott, Licensing Officer, Directorate of Law and Property, then presented the report on behalf of the Council. She stated that she had received an apology for absence from Mrs J Jones, Commercial Operations Manager, Directorate of Law and Property, but that she had submitted representations as indicated at Appendix 2 of the report submitted.

Mr McGillicuddy reported that the market would be similar to that in Halesowen Town Centre and stated that he believed the market would be a great success, would increase footfall in the town centre and offer the public a greater variety and choice of products.

In response to a question asked by the Sub-Committee, Mr McGillicuddy reported that he was happy for the organic restrictions to apply to the licence and that he would continue to display the proper accreditation and certification on all stalls selling organic produce.

RESOLVED

That the application submitted by Mr Dermot McGillicuddy, on behalf of LSD Promotions, for the renewal and variation of a consent to engage in street trading in Dudley Town Centre, be approved for a period of twelve months.

41 APPLICATION FOR THE VARIATION OF A CONSENT TO ENGAGE IN STREET TRADING – MR HARRY JONES

A report of the Director of Law and Property was submitted on an application made by Mr Harry Jones for the variation of a consent to engage in street trading in Dudley Town Centre.

Mr Jones was in attendance at the meeting.

Following introductions, Mrs J Elliott, Licensing Officer, Directorate of Law and Property, presented the report on behalf of the Council.

Mr Jones then stated his case, and in doing so highlighted that trade in Dudley had reduced considerably. He reported that there was a demand for hot dogs and hamburgers in the town and further stated that if the Sub-Committee agreed to the variation of licence, this would enable him to continue trading successfully. He reported that no objections had been received from any other street traders or retailers.

RESOLVED

That the application submitted by Mr Harry Jones for the variation of a consent to engage in street trading in Dudley Town Centre, be approved for a period of twelve months.

42 APPLICATION FOR THE GRANT OF A CONSENT TO ENGAGE IN STREET TRADING – MR RICHARD ALAN WOLLASTON

A report of the Director of Law and Property was submitted on an application made on behalf of Mr Richard Alan Wollaston, for the grant of a consent to engage in street trading in Birmingham Street, Dudley.

Mr Wollaston was in attendance at the meeting, together with Mr Rogers of The Princes Trust.

Also in attendance were PC David Smith, Licensing Officer, West Midlands Police and Mr Gavin Timmins, Senior Highways Inspector, Directorate of the Urban Environment.

Following introductions, Mrs J Elliott, Licensing Officer, Directorate of Law and Property, presented the report on behalf of the Council.

Mr Timmins then commented on representations made at Appendix 3 to the reported submitted and in doing so stated that he had no objection to the application, providing that Mr Wollaston parked his catering trailer to the rear of the footpath.

PC David Smith then elaborated on and reiterated the comments made in Appendix 4 to the report submitted objecting to the application.

Mr Wollaston acknowledged the concerns expressed and reported that a market research survey he had conducted had indicated that there was a business need in the area for the selling of refreshments as stated in the application.

Mr Rogers, in support of Mr Wollaston's application, then reported that The Princes Trust had been set up to assist people from disadvantaged backgrounds in setting up in business and stated that the Trust would continue to support Mr Wollaston in making the business a success if he was granted a licence. He further stated that the Trust would be willing to provide Mr Wollaston with a grant for the purpose of purchasing a suitable catering unit and reported that Mr Wollaston would be responsible for paying the money back to the Trust, once the business was up and running. Mr Wollaston then responded to questions asked by the Sub-Committee.

Following the summing up of their respective cases, the parties withdrew so that the Sub-Committee could come to a decision on the application.

The Sub-Committee having made their decision, the respective parties were invited to return and the Chairman then outlined the decision.

RESOLVED

That the application made on behalf of Mr Richard Alan Wollaston, for the grant of a consent to engage in street trading in Birmingham Street, Dudley, on Monday to Friday between the hours of 5.30am to 5.30pm and Saturday 5.30am to 3.00pm, be approved for a period of six months.

A report of the Director of Law and Property was submitted on an application made on behalf of Ms Pat Sparry, for the grant of a consent to engage in street trading at a site next to the fountain, in High Street, Dudley.

Ms Sparry was in attendance at the meeting together with her partner, Mr David Ward.

Also in attendance, objecting to the application was Ms Andrea Jones, Dudley Town Centre Manager, Directorate of the Urban Environment.

Following introductions, Mrs J Elliott, Licensing Officer, Directorate of Law and Property, presented the report on behalf of the Council. She stated that she had received an apology for absence from Mrs J Jones, Commercial Operations Manager, Directorate of Law and Property, but that she had submitted representations as indicated at Appendix 3 of the report submitted.

Ms Sparry reported that her business had been in operation for twelve months and had proved to be very successful. She stated that Dudley had no other coffee outlets that provided gourmet coffee at reasonable prices and further stated that the Coffee Stop, in her opinion, would be beneficial to the town.

Ms Andrea Jones then commented on points contained in Appendix 2 to the report submitted, and in doing so, she stated that her main concern was that the town centre was now saturated with street traders and that the granting of any further permits would be detrimental to the town.

RESOLVED

That the application made on behalf of Ms Pat Sparry, for the grant of a consent to engage in street trading at a site next to the fountain, in High Street, Dudley, be refused on the grounds that the location was unsuitable.

The meeting ended at 3.55pm

CHAIRMAN