

## LICENSING SUB-COMMITTEE 5

Tuesday, 26<sup>th</sup> February, 2008 at 10.00am  
in the Council Chamber, The Council House, Dudley

### PRESENT:-

Councillor Taylor (Chairman)  
Councillors Ms Craigie and Ryder

### Officers

Assistant Director Legal and Democratic Services (Legal Advisor), Mrs J Elliott (Licensing Officer) and Mr P T Furidze (Directorate of Law and Property).

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21. APOLOGY FOR ABSENCE

An apology for absence from the meeting was submitted on behalf of Councillor J Martin.

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22. APPOINTMENT OF SUBSTITUTE MEMBER

It was noted that Councillor Ryder had been appointed as a substitute member for Councillor J Martin for this meeting of the Sub-Committee only.

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23. DECLARATIONS OF INTEREST

No member declared an interest in accordance with the Members' Code of Conduct.

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24. MINUTES

### RESOLVED

That the minutes of the meeting of the Sub-Committee held on 4<sup>th</sup> December, 2007 be approved as a correct record and signed.

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25. APPLICATION TO VARY A PREMISES LICENCE, MCDONALDS RESTAURANT, DUDLEY ROAD, WALL HEATH, KINGSWINFORD

A report of the Director of Law and Property was submitted on an application received on behalf of McDonalds Restaurant Limited, Dudley Road, Wall Heath, Kingswinford for the variation of a premises license.

Mr Andrew Evans, of Shoosmiths Solicitors, for the applicant was in attendance together with the Ms Anita Hill, the Manager of McDonalds Restaurant, Dudley Road, Wall Heath, Kingswinford and Mr Ian Scott the McDonalds Area Manager.

Also in attendance and objecting to the application, on behalf of Dudley Council, was Mr Paul Evans, Principal Environmental Health Officer. It was noted that two objections to the application had been withdrawn and the objectors were not in attendance.

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

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

Mr Evans expanded on the representations made and previously circulated to the applicant, elected members and all interested parties in accordance with the Licensing Act 2003. He referred in particular, to two complaints by residents. One complaint from a nearby resident was over noise nuisance from the drive-through at McDonalds late at night. The second complaint concerned noise from car stereos and cars revving on the restaurant car park late at night. Mr Evans expressed the view that the application sought to increase the opening hours but no additional steps had been put forward in order to control the potential for increased noise nuisance issues from the restaurant's car park.

In response to questioning by the Legal Advisor, Mr Evans informed the sub-Committee that the first complaint was in 2006 and the second and most recent complaint relating to noise from car stereos and cars revving was in November 2007. The sub Committee was informed that, on the first occasion, Council had written to the restaurant following the initial complaint and no further action was taken.

Mr Evans, the applicant's solicitor, questioned the Principal Environmental Health Officer who responded that the recent noise issues had taken place before 12 midnight and continued after the restaurant was shut, the manager of the nearby Premier Travel Inn had raised a complaint since the hotel's customers and guests were entitled to a refund if they were disturbed by noise from the restaurant.

The Principal Environmental Health Officer informed the sub-Committee that proposals to put up signage urging the restaurant's customers to be considerate and not make noise for the area's residents were insufficient as the signs relied on someone having to see, read and comply with them. In response to a question on the applicant's intention to use of CCTV to identify and refuse service to offending customers, extend the CCTV coverage of the restaurant site and allow the Police and Council officers access to the CCTV recordings, the Principal Environmental Health Officer stated that what whilst these measures would be useful, they were inadequate particularly viewed against the fact that McDonalds staff were not allowed to patrol the outside of the restaurant to deal with problem customers who congregated in the car park, consuming food and discarding litter thus increasing the possibility of a vermin problem. The Principal Environmental Health Officer expressed the view that what was required were measures for managing the whole site and judging by information at hand, the site had the potential for increased noise pollution from boy racers, particularly if longer opening hours were approved.

Mr Evans, for the applicant, informed the sub-Committee that McDonalds restaurant had a number of neighbours, among them the hotel and a haulage yard. The restaurant manager lived at the hotel and had established a good relationship with the hotel management. Mr Evans told the sub-Committee that the nearest residential property, other than the hotel, was located some 84 metres away from the restaurant and was screened by some mature Leylandii trees which acted as a noise barrier. The restaurant proposed to operate the drive-through with the restaurant inside closed, between the hours 11pm and 5am, for a trial period to gauge viability. Mr Evans informed the sub-Committee that the longer opening hours would enable the applicant to serve those customers who worked shifts and others who would be on their way to and from the nearby hospital. He stated that the business expected drivers using the drive-through to be sober and therefore considerate.

Mr Evans asked the sub Committee to recognise that the mature Leylandii trees were an effective noise screen; that the applicant had not been aware of the recent complaint since the activity complained of had taken place whilst the restaurant was closed; that there was no history of noise nuisance at the site restaurant; that granting longer opening hours would enable restaurant staff to keep an eye on the car park via CCTV and if necessary deny service to potential customers to the drive-through.

The restaurant manager, recognising the need to maintain good relations with customers and local residents, had also visited the objectors who lived about half a mile from the restaurant, to discuss the issue and possible solutions. Mr Evans, on behalf of the applicant, also informed the sub-Committee that, should longer hours be granted, the applicant proposed to put in place necessary and proportionate measures in place, including prominent and legible signs, urging customers to be considerate to the residents of the area.

A dedicated litter-picker, working from 6am daily, would service the site including the nearby Ketley Road so as to reduce litter in the area. In the event of a boy racers congregating on the restaurant car park, revving their engines and playing loud car stereos late at night, the applicant proposed to engage a security company, acting in liaison with the Police, to combat the nuisance.

In response to questions, from the sub-Committee, the Legal Advisor and the Principal Environmental Health Officer, the restaurant manager informed the sub-Committee that, in the past, a rat problem in the grassy area behind the restaurant had had to be dealt with and there were currently no vermin or litter issues at the site. The restaurant manager stated that the restaurant was committed to being good neighbours and operating in accordance with the licensing objectives.

The applicant's solicitor informed the Sub-Committee that the restaurant was prepared to accept necessary and proportionate conditions to ensure that noise nuisance was minimised, in addition to reviewing the operating hours in the event of any identified problems.

In responding to questions from the Sub-Committee, Mr Evans, the applicant's solicitor, confirmed that based on risks assessments carried out by the applicant, it was not necessary and appropriate, at this time, to engage 24-hour security as the problem of noise and nuisance from boy racers had occurred during periods when the restaurant was closed. He stated that the applicant proposed to trade for a trial period under any granted extended hours, examine the viability of such extended hours in terms of increased traffic to the drive-through and consider any problems that might arise. The applicant expected that there would be an increase in traffic and even though there were about 25 parking spaces at the site, 90 percent of the customers to the drive-through would buy their food and drive home to consume it.

The applicant's solicitor, Mr Evans, also told the sub-Committee that the CCTV would not be able to record sound but staff would be able to hear loud car radios and noisy occupants of cars driving up to the serving hatches and refuse service. The CCTV images would also be used to identify offending vehicles in the event of a complaint from residents.

In conclusion, the applicant's solicitor stated that the risks of noise and nuisance were minimal, vermin problems in the past had been dealt with, the extended opening hours could be reviewed should any problems associated with these longer opening hours arise.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

Following a lengthy discussion, the Sub-Committee, having made its decision, the respective parties were invited to return. It was noted that the McDonalds Area Manager, had left for another commitment. The Chairman then outlined the decision.

## RESOLVED

That the application received from Shoosmiths Solicitors, on behalf of McDonalds Restaurant Limited, Dudley Road, Wall Heath, Kingswinford, for the variation of a premises licence for the provision of late night refreshment, be refused.

## REASONS FOR DECISION

The application is to use these premises as a drive-through between the hours of 11.00pm and 5.00am 7 days per week. This is likely to increase the public nuisance through car engine noise and noise from members of the public using this facility in the early hours.

The sub-Committee noted the previous complaints of car noise, stereos and that nuisance had occurred both when the premises had been open and closed.

The sub-Committee did not accept that the proposed measures to control the potential increase in nuisance were likely to be successful in terms of increased signage and CCTV. The sub-Committee noted that McDonalds' staff will not leave the premises after 11.00pm for understandable health and safety reasons. This means that any noise nuisance will have occurred rather than be prevented and in turn this is likely to have an impact on local residents as well as residents and guests of the nearby hotel. There is potential for an increase in litter and food deposited on the car park during the extended hours that may in turn attract vermin given that litter collections do not commence until 6.00am. The sub-Committee noted that there has been an issue with vermin some years ago from the bank at the rear of the premises.

The applicant was also informed that they had a right of appeal to the Magistrates' Court against the sub-Committee's decision.

27. REVIEW OF STREET TRADING CONSENT/PROHIBITED SITES – TANSEY GREEN ROAD (LAY-BY)

A report of the Director of Law and Property was submitted on an application received from Ms Carol-Marie Carr, for the revision of the consent/prohibited streets in Dudley Borough to include Tansey Green Road as a consent street in respect of Street Trading.

Ms Carr, the applicant, was in attendance together with Mr Garvey, her husband.

Also in attendance, objecting to the application, were Mr John Crowther (Directorate of the Urban Environment - Street Maintenance) and PC Smith (West Midlands Police) accompanied by a colleague.

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

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

PC Smith outlined the police grounds for objecting to the application, namely, the road was very busy during the times the applicant proposed to operate, the lay-by was not very far from the traffic island, was very small and vehicles, particularly larger vehicles, parking up to use the services of the catering unit would lead to congestion and obstruction of the highway.

In response to questions from the applicant and her husband, PC Smith informed the sub-Committee that the effectiveness of a safety camera placed on the Tansey Green Road due to speeding motorists and a series of fatal accidents would be reduced or negated by reason of vehicles slowing down and parking up to use the catering unit. PC Smith informed the sub-Committee that whilst it was correct that vehicles were already pulling off the road onto the lay-by, the effect of placing a catering unit on the lay-by would be to reduce the size of the lay-by leading to congestion and the obstruction of the highway. The proposal to operate the catering unit up to 2.00pm did not lessen the police concerns since lunch times were very busy times and the problems outlined would also increase up to and beyond 2.00pm.

Responding to a question from the sub-Committee, PC Smith stated that the camera was put in place owing to the high number of fatal accidents along that part of the Tansey Green Road.

Mr Crowther, for the Council, reported on the Council's grounds of objection. Firstly, the 'pull-in' on Tansey Green Road was a 'bell-mouth' constructed to allow for future vehicle access to the land owned by LCP and the Council did not wish to encourage the use of the area as a site for mobile traders as the access could form a future entrance to a development site. There was a heavy volume of heavy goods traffic, serving nearby brickyards, transport companies and scrap metal firms. Secondly, the high volume of heavy goods traffic coupled with an identified regular, though not serious, problem of mud along the highway along Tansey Green Road meant that the site was not suitable for the operation of a business involving the preparation and sale of food items. Thirdly, the space for customers to pull in was off the highway was too small and would result in a build up of parked traffic causing a hazard to other highway users.

Mr Crowther answered questions from the applicant and her husband. He told the sub-Committee that he was not aware who had placed the boulders at the entrance to the land behind the lay-by and was not aware of any development proposals for the land but that he considered the proposal to place a catering truck in the lay-by would increase congestion problems. PC Smith responded to the applicant's suggestion that their presence could deter safety camera vandals by saying that vandals would not be deterred from vandalising the safety camera since they normally operated late at night when no one is around to observe their activities.

The appellants informed the sub-Committee that they had been to the site and their calculations showed that allowing their business to operate would not cause congestion on the highway, would encourage traffic to slow down and their presence on the proposed site would deter safety camera vandals that might be minded to attack the safety camera.

RESOLVED

That the application received from Ms Carol-Marie Carr for the revision of the consent/prohibited streets in Dudley Borough to include Tansey Green Road as a consent street in respect of Street Trading, be refused for the following reasons: -

- (1) The sub-Committee did not consider the road was suitable for street trading given the previous history of accidents on the road and the need for a speed camera together with the identified problems of mud on the road.
- (2) The “bell mouth” was of insufficient size and may be needed for access to the fields when the land is developed in the future.
- (3) The sub-Committee wished to consider Tansey Green Road for prohibition in respect of street trading and therefore requested that the appropriate legal steps be taken for the sub-Committee to consider prohibition in the near future.

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28. EXCLUSION OF THE PUBLIC

RESOLVED

That, under Section 100A(4) of the Local Government Act, 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information, as defined in Schedule 12A to the Act, in particular that paragraph of Part I of that Schedule indicated below: -

<u>Agenda Item No.</u>	<u>Description of Item</u>	<u>Relevant Paragraph of Part 1 of Schedule 12a</u>
9	Application for a Personal Licence, Mr PWT	1

29. APPLICATION FOR A PERSONAL LICENCE – MR PWT

A report of the Director of Law and Property was submitted on an application received from Mr PWT, for the grant of a personal licence.

Mr PWT, the applicant, was in attendance.

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



PC Smith, of the West Midlands Police, was also in attendance together with a colleague. PC Smith informed the Sub Committee of the Police objections to the granting of a personal licence to Mr PWT. He highlighted that on 3<sup>rd</sup> May 2007 Mr PWT had been convicted at Dudley Magistrates Court for the offence of sale of alcohol to a person under 18 and sentenced to 12 months conditional discharge with £500 costs.

The sub-Committee was informed that in June 2007, Mr PWT had completed a personal license application in which he had failed to disclose the unspent conviction of 3<sup>rd</sup> May 2007. He had appeared before Dudley Magistrates' Court charged with recklessly making a false statement on a licence application and was convicted and sentenced to a fine of £200, a fine of £100 for breaching his conditional discharge, and was ordered to pay £15 Victim Support and costs of £100.

PC Smith informed the sub-Committee that a search of the Police National Computer's records had revealed two records, both for Mr Totney who confirmed that notwithstanding this, he was the one who had committed the offences. The sub-Committee was informed that except for the cases reported, neither Mr PWT nor the public house had any outstanding issues.

Mr PWT, in presenting his case, informed the sub-Committee that regarding the under age sale of alcohol, he accepted his conviction and had made a mistake in selling the alcohol since the pub was extremely busy and he had failed to check the age of the test purchaser, who had been acting under the instructions of the Police and the Council's Trading Standards officers.

The sub-Committee was informed that, on the making of the false statement on the licence application, the disclosure form had not reminded Mr PWT that he needed to disclose the offence. He also stated that he had merely forgotten the conviction and therefore had not declared it. He urged the sub-Committee to grant him a personal licence to enable his business, operated with a partner, to expand.

## RESOLVED

That the application for the grant of a personal licence be refused.

## REASONS FOR DECISION

Mr PWT had admitted and been convicted of selling alcohol to children who were 15 and 16 years of age. The conviction had occurred on 3<sup>rd</sup> May 2007. Four weeks after this conviction, Mr PWT had failed to disclose the conviction in his application for a personal licence and as a result committed a further offence of recklessly making a false statement on a licence application.

The sub-Committee felt that both these offences are so serious that they cannot grant Mr PWT a licence as they go directly to the root of the crime and disorder licensing objective.

The applicant was informed that he had a right of appeal, against this decision, to the Magistrates' Court pursuant to Section 17(1), Schedule 5, of the Licensing Act 2003.

The meeting ended at 12.45am

CHAIRMAN