

WESTERN AREA LICENSING SUB COMMITTEE – 1 SEPTEMBER 2015

MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 1 SEPTEMBER 2015 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN IN RESPECT OF AN APPLICATION FOR A LATE NIGHT REFRESHMENT LICENCE - 1 BRATTON ROAD, WESTBURY, WILTSHIRE, BA13 3EN

Present:

Cllr Trevor Carbin, Cllr Sue Evans and Cllr George Jeans

Also Present:

Damaris Broad and Gary Tomsett (Environmental Health, Wiltshire Council), Paul Taylor (Senior Solicitor, Wiltshire Council), Kieran Elliott (Senior Democratic Services Officer), Wiltshire Council), Carla Atkins (Public Protection Officer, Wiltshire Council), Mr James Loudoun (Relevant Representation), Mr Refki Ibsi (Applicant), M Faluk Rasooli (Applicant supporter), Tony Hajikakou and Christine Scrivens (Applicant representatives), Cllr Peter Evans and Cllr Jeff Osborn.

1 **Election of Chairman**

Nominations for a Chairman of the Licensing Sub Committee were sought and it was,

Resolved:

To elect Councillor Trevor Carbin as Chairman for this meeting only.

2 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 1 – 6 of the Agenda refers).

3 **Chairman's Announcements**

There were no announcements.

4 **Declarations of Interest**

There were no interests declared.

5 Licensing Application

Application by Mr Refki Ibisi for a Late Night Refreshment Licence at 1 Bratton Road, Westbury, BA13 3EN

It was noted that the hearing had previously convened on 6 August 2015 and had adjourned due to confusion over the identity of the applicant.

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by Tony Hajidakou and Christine Scrivens on behalf of the Applicant were:

- The applicants had taken note of the concerns of officers and residents and had undertaken work to mitigate those concerns. The applicants were local residents themselves, and so would take every measure necessary to uphold the licensing objectives for all in the area.
- Since the initial hearing on 6 August the cooking fans had been cleaned and serviced, and now dispersed any smells over the rooftops appropriately. Refuse from the establishment would be properly stored and disposed of.
- The extractor had been fixed and noise levels were now well within acceptable levels.
- All menus will detail the location of the nearby car park, and a sign posted asking visitors to respect residents and staff would be trained on how to deal with difficult customers - anti-social behaviour should therefore not be increased, particularly given the premises was a take-away and not a restaurant where people would remain after collecting their food.
- Continuing to restrict the opening hours to 2300 was a hindrance on the operation of the business and would cause difficulties with customers, who would expect such an establishment to be open after such a time.

Key points raised by those who made a Relevant Representation in attendance, Mr James Loudoun, were:

- Mr Loudoun disputed that the flue shoot was currently above the eaves of his property as required.

- He also stated he had witnessed cooking oil spilling into drains and left on the street. The applicants stated this would be stored within the building and removed by a proper company.
- It was also stated the noise level remained excessive despite works stated to have been undertaken, and that no improvement had been noticed as of the date of this hearing. The back gardens of adjoining properties could no longer be used for recreation.
- If the applicants were struggling to uphold objectives now, as he believed they were, more hours would only make the situation worse.

Key points raised by the Responsible Authority (Damaris Broad and Gary Tomsett of Environmental Health, Wiltshire Council) were:

- Abatement notices had been issued as a result of noise complaints, and on initial visits the noise could be heard over 30m away from the property.
- There had also been complaints of the odour.
- Environmental Health had received a certificate that the extractor fan had been cleaned, and that noise and odour would be reduced, but the certificate had not been of sufficient detail to explain to what standard this had been done and what specific effect it had had, or if the person stating they had done the work was qualified to do so.
- The latest noise check had still resulted in sound being audible from the nearby car park over general daytime noise.
- Although some progress had been made, as of the date of this hearing Environmental Health could not confirm suitable measures had been taken to address concerns, so objection remained.

All parties including the Sub Committee were given the opportunity to ask questions of the Applicant, Responsible Authority, those who made a Relevant Representation and Wiltshire Council Officers.

The Sub Committee members sought clarification on some points, including how noise measurements are taken and how quickly this could be arranged if necessary, noting this was dependent on weather conditions as well, before allowing the parties to sum up.

Mr Loudoun felt that his and others' reasons for objecting remained in place.

The representatives of the applicant stated they had already addressed all concerns and if further problems arose they would deal with them then.

Before retiring to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Sub Committee then retired to consider the application at 1505

The Hearing reconvened at 1545.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement of material legal advice given in closed session as follows:

No specific legal advice had been given, other than to clarify that the only relevant issues were those relating to the licensing application wishing to extend the premises licence beyond 2300, not other general points.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

To adjourn the hearing until at least 25 September 2015 in order for Environmental Health to acquire evidence of the efficacy of stated works to reduce the impact of noise from the property.

(Duration of meeting: 2.00 - 3.50 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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WESTERN AREA LICENSING SUB COMMITTEE – 4 NOVEMBER 2015

MINUTES OF THE RECONVENED WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 4 NOVEMBER 2015 AT THE PRATCHETT ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN IN RESPECT OF AN APPLICATION FOR A PREMISE LICENCE - 1 BRATTON ROAD, WESTBURY, WILTSHIRE, BA13 3EN

Present:

Cllr Trevor Carbin, Cllr Sue Evans and Cllr George Jeans

Also Present:

Damaris Broad and Richard Francis (Environmental Health, Wiltshire Council), Paul Taylor (Senior Solicitor, Wiltshire Council), Lisa Pullin (Democratic Services Officer), Wiltshire Council), Carla Atkins and Linda Holland (Public Protection, Wiltshire Council), Tracy Daszkiewicz (Public Health Specialist), Mr N and Mrs D Dixon, Mr James Loudoun, (Relevant Representations), Mr Niam Ismali (on behalf of the Applicant), Christine Scrivens (Applicant representative), and Cllr Jeff Osborn.

1 Reconvening of Hearing

The hearings that commenced on 6 August and 1 September 2015 were reconvened. Councillor Trevor Carbin was nominated as Chairman at the meeting on 1 September and continued as Chairman for this meeting.

2 Procedure for the Meeting

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5 - 11 of the Agenda refers).

3 Chairman's Announcements

The Chairman gave details of the exits to be used in the event of an emergency.

4 Declarations of Interest

There were no interests declared.

5 Licensing Application

Application by *Mr Refki Ibisi* for a Premises Licence at 1 Bratton Road, Westbury, Wiltshire

The Licensing Officer reiterated the purpose and scope of the application, the premises to which it related and the key issues for consideration.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and those who had made a Relevant Representation were given the opportunity to address the Sub Committee.

Key points raised by Christine Scrivens on behalf of the Applicant were:

- There was no proof that the picture of the rat (page 52 of Agenda papers) was as a result of the premises;
- Following works that have been carried out at the property the Applicant will say that the odours have now been eliminated and oil drums are now stored properly;
- Where the Applicant parks his car is not part of the application and he is not responsible for any accumulated rubbish in the area where he parks;
- The vibrations heard by the residents of the Castle have now been taken care of, although problems of this nature in this home were never mentioned before the application was lodged;
- The noise reading that was carried out from the bathroom of The Castle was not appropriate and should not be used as a substitute for the children's bedroom in a similar position. There are no soft furnishings within a bathroom to soften the noise and this reading should not be accepted;
- The noise level readings taken on 28 September were not supplied to us until 7 October and one of the noise consultants on the list supplied by the Council had a long turnaround time for works;
- An offer to reduce the hours of application for late night refreshment to 23:00 to 23:30 Sunday to Thursday and 23:00 to 01:00 Friday and Saturdays was put forward which were in line with The Olympia (another venue in Westbury that has a premises licence for late night refreshment; and
- The premises should be able to trade on a Sunday in line with the other premises in the area;

Key points raised by Damaris Broad (Environmental Health Officer) on behalf of the Responsible Authority (Environmental Control and Protection) were:

- A timeline of events since the adjourned hearing on 1 September was attached as Supplement (1) to the agenda and on 17 September we were advised that the relevant works had been carried out;
- On 30 September, Environmental Health Officers visited The Castle to take noise measurements and concluded that the noise is still a statutory nuisance and does not meet the criteria of the Abatement Notice;
- Notified on 28 October that Elite Kitchen Services were carrying out further work on the extraction;
- The bathroom at The Castle was used to take the readings as it was no appropriate to use the children's bedroom at the time the readings were taken as they were asleep;
- Although the readings taken on 28 October found that the noise levels were reduced, it still did not meet the requirements of the Abatement Notice; and
- Despite numerous requests, the residency times of the carbon filters had still not been received from the Applicant and as such the Abatement Notice for the odour issues was still in force.

Key points raised by those who made a Relevant Representation were:

Mr Loudoun -

- We have worked with the Applicants and allowed them to access our property to carry out works, etc. We would like to continue to work with them and ensure a resolution so that we can get on with our lives and live without the disturbances from the noise and odours from the premises;
- There was an incident when scaffolding was erected in my property without my permission and my wife and children were prevented by those acting on behalf of the Applicants from entering our property;
- An extension of the trading hours would cause further disturbance to myself and my family as staff from the premises are hanging around at the back of my premises and are smoking there;
- I would say that the odours have not reduced and there are two plastic containers of oil by my back gates at the present time that should not be there;

- The vibration has reduced and I thank the Applicants for that;
- I want to be able to enjoy my back garden and during the summer months. With the window open it is too noisy and it prevents us from sleeping and it is miserable for us.

Mrs Dixon

- The smell from the premises is still prevalent and it is a very pungent oily smell. In summer would could smell it in our house;
- We suffer from noise disturbance problems with the customers parking where they shouldn't be; and
- When planning permission for the premises was granted in 1992, restrictions were placed on the timings of the premises and this was imposed because of its location near to residential homes.

The parties were given the opportunity to ask questions of the Applicant, Responsible Authority, those who made a Relevant Representation and Wiltshire Council Officers.

The Environmental Health Officer confirmed that until all relevant information regarding the carbon filters had been received that the Abatement Notice would still remain.

The Environmental Health Officer also confirmed that the bathroom in The Castle from which the noise readings were taken was slightly closer to the fan at the premises, but that the readings taken were still accurate and appropriate.

The Responsible Authority and those who had made Relevant Representations did not wish to add any further points in summation.

Summations points made by Christine Scrivens on behalf of the Applicant were:

- When the scaffolding was in the property of Mr Loudoun this was removed within a couple of minutes and Mrs Loudoun was able to access her property;
- The engineer employed by the Applicant advised there was no fat odour as the fan was clean;
- Aware that when Planning Permission was granted in 1992 that the premises was not able to trade after 23:00 or on a Sunday, but this is not in line with other premises and the business should be able to gain maximum revenue and trade as others do;

- The filter for the extraction system had not yet been installed as there had been a hold up with the manufacturers but it should be in place by the end of the week; and
- We say that had the noise readings been taken from the bedroom then the levels could have been 4 – 10 db less which would bring them within the acceptable levels.

The Chairman sought clarification on the differences between DEFRA and World Health Organisation levels.

The Senior Environmental Health Officer confirmed that the noise readings taken were in the same proximity and in his opinion were suitable and proportional readings.

The Sub Committee members sought clarification on some points before retiring to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Sub Committee then retired to consider the application at 10:50am and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 11.45am.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement of material legal advice given in closed session as follows:

No specific legal advice had been given, other than to clarify that the only relevant issues were those relating to the licensing application as applied for.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

Decision:

The decision of the Sub Committee is that the application by Mr Refki Ibisi for a Premises Licence at 1 Bratton Road, Westbury, Wiltshire, SN13 3EN be rejected.

Reasons for the Decision:

The Sub Committee considered that, at present, the operation of the premises for the provision of late night refreshment beyond 23:00 would prejudice the licensing objective of the prevention of public nuisance as there would be unacceptable levels of noise and odour which would affect the amenity of local residents.

The Sub Committee accepted that these are issues that may be able to be addressed by technical measures; however at present the measures in place are not adequate to prevent the unacceptable level of nuisance.

The hearing had been adjourned from 1 September to allow time for the Applicant to carry out works at the premises to address the concerns that had been raised by local residents and the Council's Environmental Control and Protection Officers relating to noise, odour and vibration. The Sub Committee accepted that the vibration issues had largely been resolved, but considered that insufficient steps had been taken to mitigate the effects of noise and odour arising from the operation of the premises.

The Sub Committee accepted the evidence of the Council's Environmental Control and Protection Officers that the levels of noise, as measured by them, were still unacceptably high and, as such constituted a public nuisance. They also accepted the evidence from both the local residents and the Council's Environmental Control and Protection Officers that the use of the premises as a hot food take-away produced levels of odour that were not adequately controlled at present, and which would be a nuisance to neighbouring residents if the premises were to operate beyond 23:00 hours.

The Sub Committee considered the offer to reduce the hours applied for but did not consider that this would sufficiently mitigate any of the concerns raised.

A number of other matters had been raised by the parties, both in writing and orally at the hearing. These included the storage of used cooking oil and other waste and allegations of unlawful parking. However, these were not considered to be relevant to the issue of whether a licence should be granted for the provision of late night refreshment.

The Sub Committee, therefore, concluded that rejection of the application was the only practical option and was one which was both proportionate and appropriate.

In reaching its decision, the Sub Committee took account of the representations, both oral and written, that had been made on behalf of the Applicant, together with those made on behalf of Wiltshire Council Environmental Control and Protection Team and those who made

Relevant Representations in objection to the application. The Sub Committee also took account of relevant Government guidance and the Council's licensing policy.

Right of Appeal

Any party has the right to appeal against this decision to a Magistrates' Court. Any appeal must be made to a Magistrates' Court within 21 days of the date of notification of this decision.

(Duration of meeting: 10.00am - 11.50am)

The Officer who has produced these minutes is Lisa Pullin,
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