
MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'C'
HELD ON 20 JUNE 2016 AT 2.00 P.M. IN THE COUNCIL CHAMBER, WEELEY

Present: Councillors Cossens (Chairman), Bucke and J Henderson

Stand-by Member: Councillor Watson

In Attendance: Head of Governance & Legal Services (Lisa Hastings), Head of Customer & Commercial Services (Mark Westall) Licensing Manager (Simon Harvey) Democratic Services Officers (Janey Nice and Katie Sullivan), Environmental Protection Officer (Andy Rutson-Edwards) and Licensing Assistant (Emma King)

1. WELCOME

The Chairman (Councillor Cossens) informed the Committee that the applicant Mr Radek Pompa was not present and had asked if the Committee could change the timing of the meeting in order for him to attend, but as this was not possible, it had been decided that the hearing would go ahead without him.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

An apology was submitted from Councillor M J Skeels Jnr (with Councillor Bucke substituting).

3. MINUTES OF THE LAST MEETING

The minutes of the meeting held on 29 September 2015 were signed as a correct record.

4. DECLARATIONS OF INTEREST

There were none.

5. LICENSING ACT 2003 – APPLICATION NO: 16/00249/PREMGR – APPLICATION FOR THE GRANT OF A PREMISES LICENCE - GOSSIP COFFEE LOUNGE, 78 STATION ROAD, CLACTON-ON-SEA

The Chairman welcomed all those persons present to the meeting, introduced the Sub-Committee members and outlined the procedure that would be followed which was included within the agenda pack.

The Licensing Manager (Simon Harvey) advised the Chairman and meeting that the applicant Mr Pompa was not in attendance and that it was his understanding that Mr Pompa had indicated in a phone call to the Democratic Services Officer Janey Nice that he was not intending to be at the hearing. Mrs Nice confirmed that this was the case. Mr Harvey asked the Chairman if he would like to temporarily adjourn the meeting to allow him to contact Mr Pompa to see if he was going to attend the hearing to present his application. The Chairman and Members agreed that they wished to temporarily adjourn so that Mr Pompa could be contacted and advised that it was in his best interest to attend the hearing so that he could present his own application.

Mr Harvey advised that Mr Pompa had been fully informed of the meeting and its date, time and location in accordance with the Licensing Act 2003 hearing regulations, but that he would make contact again to confirm whether or not he would be attending that day. The meeting was adjourned at 2.10 p.m.

The Licensing Officer (Emma King) left the meeting and phoned Mr Pompa. On her return she advised that Mr Pompa had said that he was too busy to attend the hearing and had a café full of customers that he needed to serve. Mrs King advised that she had asked Mr Pompa if he was happy for the application to be considered in his absence. He confirmed that he was but that his preference would be to attend on another day. Mr Pompa confirmed that he was fully aware that the meeting had been arranged for Monday 20 June 2016 at 2.00 p.m. in the Council Chamber at Weeley but again said that he was too busy to attend the meeting.

After a brief discussion on whether to proceed with the hearing the Chairman and Members decided that they would continue and the Chairman reopened the proceedings at 2.30 p.m.

The Licensing Manager informed the Sub-Committee that it had before it for its consideration, as set out in item A.1 of the Report of the Corporate Director Operational Services), an application that had been submitted by Mr Radek Pompa (trading as Radek Contractor Limited) for the grant of a new Premises Licence in respect of the above premises under the Licensing Act 2003, this was to allow for the performance of plays, films, live music, recorded music, performance of dance as regulated entertainment and provision of late night refreshment. Mr Harvey added that there had been no application for the sale of alcohol and the applicant described the premises as a Coffee Shop.

In his original application Mr Pompa had asked for the opening hours of Mondays to Sundays as 0800 to 0100 hours. However after discussions between Essex Police who were a Responsible Authority and Mr Pompa, the applicant agreed to revise his application's opening hours from Mondays to Sundays 0600 to 2300 hours as Essex Police had no objection to the change in opening hours.

Mr Harvey further informed the Committee that as Mr Pompa had agreed to amend his application for opening hours permissions for Late Night Refreshment would no longer be needed now that he was intending to close at 2300 hours. Mr Harvey added that Members would be aware that a premises would only require a licence for Late Night Refreshment if hot food and or hot drink were sold after 2300 hours.

Mr Harvey said that there had been one representation which had been received from the Council's Environmental Services Noise Team who had raised concerns that the application for regulated entertainment was likely to undermine the Prevention of Public Nuisance Licensing Objective as the Coffee shop was located close to residential properties in the immediate vicinity. He said that Environmental Services had asked Mr Pompa what measures he had intended to put into place to prevent the breakout of amplified music at the premises from live and recorded music, however, he added, that the applicant had not provided an answer to that question to the satisfaction of the Environmental Service Noise Team at the time of the meeting.

Mr Harvey said that all of the relevant human rights information, Section 182 Guidance and extracts from the Council's Statement of Licensing Policy were detailed in the report attached to the Agenda.

Councillor Bucke asked for clarification over the revisions to the application that Mr Pompa had submitted after his discussion with Essex Police. Mr Harvey informed the Member that the application for a premises licence was as a brand new application and it was open to the applicant to revise the application to take into account any concerns or representations that had been made, which in this case had come from Essex Police who did not wish to see Late Night Refreshment as part of the application until 0100 hours. As a result of these concerns raised with him by the Police, Mr Pompa had revised his application and now would not be selling hot food and/or hot drink after 2300 hours. Mr Harvey advised that permission to allow Late Night Refreshment as a licensable activity was only needed if hot food and/or hot drink were being sold between the hours of 2300 to 0500 hours. He added that if the café was not carrying out any other form of licensable activity at the premises such as live or recorded music then it would only require the relevant Planning permission and a food hygiene licence in order to operate but as Mr Pompa was wanting to have permission for licensable activities he needed to apply for a premises licence. When Councillor Bucke asked about the forecourt Mr Harvey informed him that the applicant wanted permission for activities both indoors and outdoors and it was clearly apparent that permission for outside activities was also required.

When asked, Mr Harvey confirmed that the applicant was a limited company. The Head of Governance and Legal Services also confirmed this as on Page 11 of the report of the Corporate Director (Operational Services) the relevant box had been ticked by the applicant. Mrs Hastings added that it was probably an error that Mr Pompa had included his name on the application form and it was fair to assume the application had been made by the company and the Licensing Manager agreed this was indeed the case. Councillor Bucke asked whether it was fair to assume that the Directors of the company could change at any time and did not necessarily own the company or actual premises. Mr Harvey said he had no information on that but suspected that Mr Pompa could be a leaseholder given the location of the premises.

Councillor J Henderson asked whether customers could take their own alcohol into the coffee shop and was informed by Mr Harvey that he could not answer this in Mr Pompa's absence but informed the Member that Mr Pompa could not sell alcohol and would be responsible if any alcohol related anti social behaviour took place on the premises. He added that Mr Pompa was aware of that and did not want alcohol on the premises.

Councillor J Henderson also raised concern about the timings for music on the application and Mr Harvey said that whilst specific times had been applied for this did not mean that the applicant would have to actually follow those times each day, it gave the applicant the flexibility to have live music so he did not have to apply for a licence each time he wanted live music.

The Chairman asked the Council's Responsible Authority, the Environmental Protection Officer (Andy Rutson-Edwards) if he had any concerns as he was worried about public nuisance, particularly to the residential properties above the premises and also above other shops and also The Grove. Mr Rutson-Edwards informed the Chairman that he had spoken to Mr Pompa the previous week and had been informed by Mr Pompa that he was planning to have music every Sunday on the forecourt to the Coffee Shop. Mr Rutson-Edwards further informed the Committee that The Environmental Protection Act 1990 and The Noise Act 1996 gave the Council powers to take any action against public nuisance. He said he had asked Mr Pompa what measures he was going to take to control the level of noise from the music at the nearest residential premises from both indoor and outside events.

Mr Pompa said he was just going to let the residents know when he planned to have live events on the forecourt. To date, he said he had had no response from Mr Pompa and he, as the Responsible Authority, objected to live music outside of the Coffee Shop.

The Chairman noted the layout of the building from the map on page 26 of the report attached to the aforesaid agenda and said he was not sure if the 3 metres marked on the map included the forecourt and was informed that it was the forecourt for the whole length of the building.

Councillor Bucke said he was not sure what the decibel levels would be for the property and Mr Rutson-Edwards said that there were no set levels but there were guidelines and codes of conduct for public houses etc. However, he said, 35db would be a recommended level to be attained in all living room areas of the existing dwellings arising from external noise sources (recommended by the World Health Organisation) but that different premises would have different levels of noise and explained to the Committee of how the decibel levels work. Councillor Bucke asked if it could be as high as 65db and was told it would again depend on the type of noise. Councillor Bucke commented that outside music would be a nuisance to neighbours whenever held and the Chairman said the nuisance would be worse if every day of the week and the application seemed to imply live music would be played seven days a week.

Councillor Bucke asked the Licensing Manager if it was unusual for a limited company to apply for a premises licence and was informed that in fact it was not unusual. Councillor Bucke worried in case a company could find a loophole to get around the live music issue.

The Head of Governance and Legal Services informed the Committee that the grant of a premises Licence would be issued in the name of the applicant, i.e. as this application was in the name of a company any concern of noise nuisance would be against the limited company who would be responsible for any individual running or occupying the premises on behalf of the applicant and that person would be held responsible for any noise nuisance..

There were no further questions from members of the Sub-Committee.

The Sub-Committee then **RESOLVED** that the public be excluded from the meeting, pursuant to Section 100A(4) of the Local Government Act 1972, during the period when the Sub-Committee would be deliberating and considering its decision, on the grounds that such deliberations involved the likely disclosure of exempt information, as defined in Paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

Members of the Sub-Committee then withdrew from the meeting to deliberate and consider its decision. The Head of Governance and Legal Services and Democratic Services Officers were asked to accompany Members to give advice on any legal points raised and to record the decision.

Following such deliberations, other Officers, Members and members of the public were re-admitted to the meeting. The Head of Governance and Legal Services reported that whilst the Sub-Committee were considering various options available to it, the legal advice provided related to reasonableness of any decision related to the facts.

It was unanimously **RESOLVED** that the decision of the Sub-Committee be as follows:

- “1. The Sub-Committee has given careful consideration to this application. In reaching our decision, we have taken into account the representation received from Tendring District Council Environmental Services along with the Guidance issued by the Secretary of State and others matters as set out in the Licensing Authority’s own Statement of Licensing Policy.
2. The Sub-Committee **DOES NOT AGREE** to grant this application. The reasons are as follows:

On the grounds of the Prevention of Public Nuisance and the objections raised and presented to the Committee by the Responsible Authority, in this case Environmental Services, that the applicant has not indicated any measures they proposed to prevent a noise nuisance from the playing of amplified sounds and the proposed recorded and live music.

Unfortunately, as the Applicant neither attended the hearing nor provided any evidence or other information which the Committee could take into account to alleviate the concerns raised, which could apply to all of the regulated activity. The Committee considered that without any information it would be unreasonable to make any other decision than to refuse the application for any of the regulated activity, whilst the objection remained outstanding with no measures of mitigation being received from the Applicant.

Finally I must mention that all parties who are aggrieved at the decision of the Sub-Committee have the right of appeal to the Magistrates’ Court within a period of 21 days beginning with the date the Applicant is notified of the decision by notice.

This Decision was made on Monday 20 June 2015 and will be confirmed in writing to all parties”

The meeting was declared closed at 3.21 p.m..

Chairman