

CANTERBURY CITY COUNCIL

LICENSING SUB COMMITTEE

**Minutes of a meeting held on Tuesday, 17th February, 2009
at 10.45 am in Marion Attwood Room, Council Offices**

Present: Councillor Harrison (Chairman)

Councillor J Perkins
Councillor Reuby
Councillor A Taylor
Councillor Reuby (Reserve)

Officers: Nick Hughes - Democratic Services Officer
Julie Oates - Senior Environmental Health Officer
Craig Savage - Senior Planning Officer
Dave Stevenson - Senior Licensing and Enforcement Officer

10 **APOLOGIES FOR ABSENCE**

An apology was received from Councillor R Flaherty.

11 **SUBSTITUTE MEMBERS**

Councillor J Perkins was present as a substitute for Councillor R Flaherty.

12 **DECLARATION OF ANY INTERESTS BY MEMBERS OR OFFICERS**

There were no declarations of interest made.

13 **MINUTES**

RESOLVED – the minutes of the meetings of the Sub-Committee held on 19 and 23 January 2009 were agreed as a correct record.

14 **LICENSING ACT 2003 - PREMISES LICENCE FOR THE ROOMS, 35 ST MARGARET'S, CANTERBURY**

The Licensing Sub-Committee considered the application for a Premises Licence on the above premises at the council offices, Military Road on the above date.

Four responsible authorities and four interested parties had made representations on the application.

Mr Skeens of Jeffrey Green Russell addressed the Sub-Committee and explained that he wished to submit a number of additional papers to the hearing. The Sub-Committee, as well as others attending the hearing, read the papers. The

interested parties informed the sub-committee that they had no objection to the papers being submitted. The Sub-Committee agreed to accept them.

The Senior Licensing Officer introduced the application.

Mr Skeens explained that the premises had already been used under an A3 planning use as a restaurant. There was no intention to introduce an A4 use as the premises was going to be a restaurant and not a public house. He offered up a condition whereby no noise generated inside the property would cause disturbance to noise sensitive properties in the area. There would be no live music in the premises as it was difficult to monitor sound levels from live music.

He confirmed that the police had withdrawn their objection subject to the changes they had recommended to the applicant, which were put before the Sub-Committee. He stated that the premises hours had been changed from the original application. Last entry would be at 01.00 hours to ensure that there would be a gradual trickle of people leaving the premises rather than many people leaving at once at closing time.

He explained that taxis would be offered to customers as they left the premises. A number would be given to the customer and when the number was called the customer would leave the premises and would walk down the street and pick up the taxi from the end of St Margaret's Street. This would avoid taxi noise outside the premises.

He stated that the Fire Service had withdrawn their objection. The Senior Licensing Officer confirmed this.

He acknowledged that the area was an area of cumulative impact under the council's licensing policy. He acknowledged that the onus was on the applicant to show that by granting a licence for the premises the problems already in the area would not be increased.

He explained that the applicant, Mr Cross, had lived in Canterbury for six years and found that there was nowhere in the city to socialise late in to the evening that wasn't a nightclub. Mr Cross planned to invest £1m of his own money in to the premises with his business partner Professor Wells.

Mr Cross had been in the food retailing industry for over 30 years and employed over 350 people in business. It was intended that the premises would target the 25 to 44 age group.

He introduced Mr Able, the applicant's architect. Mr Able explained that he had been briefed to deliver a food led organisation of a type not already available in Canterbury. He explained the layout of the building and that it was the intention to keep as many period features as possible.

A planning application would be submitted to remove the current outbuildings and create a glazed walkway to a new two level extension. The green outside spaces would be purely for decoration and would not be open to the public.

The extension would stand alone, no walls would abut any surrounding properties and the builders would work closely with acousticians and the environmental health officers in order to ensure that no noise transferred to surrounding buildings.

The kitchen and staff facilities would be on the second floor. The basement lounge would be linked to the new extension by a tunnel, which would also act as a storage area. The tunnel had not yet been started. Great care would be needed with the excavation.

Mr Able confirmed that it would be possible to ensure that there would be no noise transfer to other buildings, but that it would be expensive. He also confirmed that the rubbish would be brought down the main staircase from the kitchen to the bin store at quiet times of the trading day.

He stated that the types of food available would vary and that the seating would be a mixture of high and low seats and would not be in a traditional format. Mr Able confirmed that food was an integral part of the design and that the premises had been designed to be quirky and not the norm. He had not been briefed to design a pub.

There was no specific disabled toilet facility on the premises. The building could not be adapted to allow wheelchair access.

He confirmed that there was no dance floor, nor provision for a designated drinking area, as it had not been included in the brief.

He confirmed that there would be no disco or disc jockey and this was offered up as a condition.

The Environmental Health Officer asked how it would be possible to ensure that patrons arriving at 11pm would be entering to eat? Mr Skeens confirmed that the premises had been designed to attract people to eat.

Miss Anderson, the applicant's consultant on leisure matters, confirmed that she had worked with Mr Able before on a number of other projects. She explained that it was the intention that the jobs offered by the premises would be for local people and that there was a huge demand for these types of jobs. She also confirmed that all 40 staff would not be on site at the same time.

There would be a mixture of door staff, both male and female. The Senior Licensing Officer explained that a ratio of 1 SIA registered door supervisor to every 75 persons was required in the District. A condition was agreed to this effect. The applicant agreed to employ one SIA registered door supervisor on a Thursday night and two on Fridays and Saturdays. He would ensure that control staff of each sex would always be on duty when required.

Miss Anderson confirmed that although students would not be precluded from the premises, it would be important to tailor the ambience to the target age of the customers. There would be a policy of not allowing under 21s into the premises.

Miss Anderson said that there would be not be a time when food ceased to be served but reminded the Committee that there was no entry after 1pm.

Miss Anderson also explained that there was a trend to eat later in to the evening and that it was becoming increasingly rare to find a traditional restaurant. She explained that it was common in London to eat much later in the evening and many restaurants were applying for later licences.

She also confirmed that the premises expected to gain 40% to 45% of its revenue from food sales – this represented a higher level than a public house would achieve.

Mr Cross then explained that he had bought the premises last May after it had been on the market for over four years. He had approached many solicitors, accountants and other professionals in the city to canvass their opinion on whether they would use such a venue as the one being proposed. They had confirmed that they would. He also said that he wanted to create something different and unique that was not available in Canterbury or the whole of East Kent.

An interested party asked whether there would be any irresponsible drinks offers that attracted antisocial people. The applicant agreed that there would be no irresponsible drinks offers and offered to include this as a condition.

Members and interested parties asked questions of the applicant's witnesses.

Mr Savage, an officer of the planning authority confirmed that the premises already had unimplemented planning permission for A4 use (a drinking establishment) but the official use is A3 restaurant. He stated that it required permission for the proposed extension and it wasn't guaranteed that they would get this. He was not sure about the proposals and thought that it was a very intensive use for such a small building. He also stated that he was not convinced that it would not become a pub.

Mr Skeens asked Mr Savage whether planning enforcement action could be taken if the premises were operated outside its planning permission, which he confirmed.

The members and interested parties also asked question of the planning officer.

Mrs Oates of the Environmental Health department then gave evidence. Despite the proposed hours having been cut they were still later than surrounding premises. Her biggest fear was the noise from patrons leaving the premises, as the Council had no control over this type of noise.

She had concerns over the soundproofing proposed as the building was listed there could be difficulties in carrying out the work. The proposed soundproof glazing would be 8.4mm thick, which might cause practical difficulties.

Mr Skeens confirmed that all the windows had been replaced in the property with soundproof glass, as the previous windows were rotten.

Miss Oates also raised concerns that there were no bass control measures for recorded music and that bass noise was the hardest to control. She acknowledged that the applicant had proposed to play quieter music an hour before closing but she still had concerns.

Mr Skeens confirmed that the quieter music was part of the wind down hour. If the music were cut off completely then people would leave the club en masse. The government guidance advised that music be made quieter and not cut off towards the end of the premises' opening hours.

In response to a question from the Senior Licensing Officer Miss Oates confirmed that a floating wall could minimise noise transfer to neighbouring properties if done properly, however if was not carried out properly then it could make the problem worse.

Mr Skeens offered to make working with the Council's environmental health department to take noise control measures a condition, as well as imposing a chill out hour.

Members asked whether the applicant would agree to a condition that all doors and windows would be closed except for access and egress when music was played. Mr Skeens agreed.

The members asked where people would smoke. Mr Skeen confirmed that the pavement area directly outside the premises would be the smoking area. He confirmed that people would be let out of the premises to smoke. He explained that there were systems, whereby a person's fingerprint was taken and scanned and scanned again to allow re-entry, however the system had not proved very successful. The management greeter would control the number of persons allowed out to smoke and return to the premises.

Mr Skeen agreed a condition that only half finished bottles would be the only off sales. He also agreed that no drinks would be allowed outside and that empty bottles would only be disposed of between 7am to 9pm. You also agreed that tables would be set up at all times.

Mr Arnold an interested party then gave his evidence to the Committee, and the applicant agreed to his introducing new points.

Mr Arnold explained that the best remedy for noise was not to have it in the first place and that sleep deprivation affected everyone. His house was next to the proposed new extension and he had already heard noise and vibration from the work that had already been carried out. It would be intolerable to have noise at 1am, 2am or 3am in the morning and that the applicant could not guarantee that there would be no noise.

He could hear bass noise from premises down the street and so had no confidence that bass noise could be eliminated. It was the wrong location for a licensed premises and the applicant had failed to show how he would prevent noise from adding to the problems of the cumulative impact area.

He summed up by saying that he objected to the location of the premises, the hours, the nature of the activities, the design, the capacity, the last admission time, the increased levels of violence it would attract and the noise caused by taxis.

Mr Roberts then put forward his objections. He explained that he did not believe that the applicant had shown how they would not add to the noise levels. He also did not believe that it was a restaurant and thought it to be a pub in disguise. The use of the garden must be totally prohibited. There were no details in the proposals as to how the applicant planned to minimise noise from the building. The opening hours of the premises were totally unacceptable as they were both too early and too late. There had been a temporary lull in the street noise due to the closure of three premises in the street.

Mr Cameron spoke on behalf of the St Mildred's Area Community Society. He explained that there was still confusion over whether the premises had A3 or A4 use. It was his preference that the planning application should be considered first. If any of the controls and conditions that the applicant had agreed to did not work then the area would be left with a nightclub. One thing that could not be dealt with was noise on the street; most of the members of the group went to bed at around 11pm. The proposals would only encourage noise and nuisance after 11pm.

Mr Skeen then summed up taking into account the interest parties objections. He confirmed that the premises were for A3 use. He stated that the premises was only intended to be a food and drink establishment and that if the rules were broken then the applicant could be taken to court. He reminded the Sub-Committee that planning issues did not fall in to the four licensing objectives.

He explained that the noise would be far less severe with the current proposals than if everyone left at 3am. It was also not possible to tell if the premises would cause nuisance and if it did residents could ask for a review.

He could not judge whether the opening of the premises would encourage others to open or whether any of the three closed premises would reopen.

The fact that the police were not objecting to the application should be considered when looking at crime and disorder concerns.

The city's corporate plan encouraged employment and the premises would be an intensive employer.

The taxi system had been proven to work elsewhere and did reduce noise to the immediate residents.

The application also supported the council's corporate plan as it reused an old abandoned building. The applicant was a serious businessman and knew the risks if he failed to follow the conditions set down.

He drew attention to the licensing guidance that flexible hours reduced the impact on local communities by spreading out the people leaving the premises. The guidance aimed to reduce binge drinking by not having fixed closing times.

Potential problems such as loud music had been addressed through the agreed conditions.

He added that a mix of age groups was a good thing and helped to reduce problems. Finally he stated that the applicant had and would follow best practice at all times.

The Senior Licensing Officer confirmed that there was a lack of cabs late at night in Canterbury and that it would be possible to work with the applicant regarding the details of the taxi scheme.

The city council's legal representative then summarised the proposed application. The members adjourned with the legal representative to make their decision. It was decided that the decision would be given at 1pm on the following day to allow the members adequate time to consider the evidence.

The Sub-Committee reconvened the hearing at 1pm the following day. The Chairman of the Sub-Committee asked the city council's legal officer to advise the committee of their decision.

She explained that the Sub-Committee had taken considerable time to go through the evidence that had been provided at the hearing by all parties.

They had taken into account the Licensing Act 2003, the Guidance issued under Section 182 of the Licensing Act 2003, the Licensing Objectives and the Licensing Policy and the evidence provided by all parties.

The premises were in an area where a special policy was in operation which came in to effect on 24 July 2008. Paragraph 13.29 of the Guidance states that the effect of adopting a special policy of this kind was to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that were likely to add to the existing cumulative impact would normally be refused, following relevant representations being made unless the applicant could demonstrate in their operating schedule that would be no negative cumulative impact on one or more of the licensing objectives.

The Sub-Committee recognised that the applicant had stated that a considerable amount of money would be spent on the premises. He had also reported that a dispersal policy would be implemented. Various conditions had been offered to alleviate the objections including those of the Police, who had withdrawn their objection after negotiations with the applicant.

The applicant had produced a noise report but the Environment Health Officer had not withdrawn her objection. She considered that there could be nuisance from voices in the street late at night. She also considered that because the building was listed there could be problems of public nuisance with noise coming from the premises, as it would be difficult to insulate the building against noise breakout.

The noise resulting from customers leaving the premises would be difficult to control in spite of the applicant's dispersal policy.

The Planning Officer also objected as a responsible authority. He stated that there was an existing A4 Public House unimplemented permission. He had stated that there was no permission at present for the building of the extension required by the applicant, nor for the extended hours of use.

The applicant's case set was that there was an intention to use the premises mainly as a food led premises rather than a drinking establishment. He had stated that if Development Control thought that there was a change of use they could take enforcement action, under the Town and Country Planning legislation.

Several interested parties had attended to put forward the problems as to the nuisance already caused by premises with licences for regulated entertainment in the special policy area.

RESOLVED – The meeting was adjourned and the Sub-Committee retired to consider their decision.

RESOLVED - The members decided to refuse the application on the ground of the prevention of public nuisance for the reasons given below and because they felt that the presumption set out in the cumulative impact policy had not been rebutted.

The Committee recognised that the applicants had offered a number of conditions to be added to the operating schedule during the hearing in order to rebut the presumption that the application would be refusing considering it was in an area covered by the cumulative impact policy. The Committee, however were not satisfied:

- a) that a food led premises would need the opening hours requested – it seemed to them that it was in reality an establishment based on the consumption of alcoholic drinks and other drinks;
- b) that the noise and disturbance caused could be sufficiently controlled within this sensitive area and within the building which was listed and whose construction did not lead to effective insulation; and
- c) as yet the applicant had no planning permission for the extension needed for the premises, nor for the extended hours requested.

The Committee recognised that planning and licensing were separate legal frameworks but in this particular case, again in view of the cumulative impact policy, would wish to see a planning permission and a clarity in the planning use allowed before considering any grant. They did not accept the argument that use of the premises in contravention of the existing planning permission could be dealt with through planning enforcement measures. They considered that this was insufficient reassurance to address their concerns over the possible effects of regulated activities at the premises in the area covered by the special policy.

In taking their decision the Committee accepted the evidence of the interested parties as to the effect of existing premises on them and the effect that the new license might have.

RESOLVED – the Licensing Sub-Committee adjourned the hearing to consider their verdict and that the hearing would recommence the following day.

There being no other business the meeting was adjourned at 5pm.