

**LICENSING SUB COMMITTEE
12 December 2018**

PRESENT: Councillor Andrew Morgan - Chairman; Councillor David Kelsey - Vice Chairman; Councillor John Trickett

The meeting commenced at 9.50am

SECTION I - BUSINESS RECOMMENDED TO THE COUNCIL

No items

SECTION II - BUSINESS DECIDED UNDER DELEGATED POWERS

86. APOLOGIES

There were none.

87. DECLARATIONS OF INTERESTS

There were no declarations of any disclosable pecuniary interests or other interests by members of the Sub Committee.

88. PUBLIC ITEMS

There were no public questions or deputations received.

89. EXCLUSION OF PRESS AND PUBLIC

DECISION MADE:

That under Section 100(A)(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 Paragraphs 1 and 2 in Part I of Schedule 12A of the Act and that the public interest in withholding the information outweighs such interest in disclosing the information.

90. APPLICATION FOR PUBLIC CARRIAGE DRIVER'S LICENCE

The Chairman made introductions and explained the procedure for the hearing which was agreed by all parties.

Licensing Sub-Committee, 12 December 2018

The Sub Committee considered a non-public report marked '4' regarding an application by the person named in the report for a public carriage drivers licence.

The Licensing Officer explained that the application was before the Sub Committee because although the application fell just outside the Council's Policy for refusing a licence in relation to the length of time since criminal convictions, as set out in the Council's Statement of Policy and Guidelines, one of the offences committed related to dishonesty. This would normally result in an application being refused. The Sub Committee was asked to consider whether the applicant was a fit and proper person to hold a public carriage drivers licence.

The applicant attended the hearing and gave verbal evidence in support of his application. He responded in detail to questions from Members of the Sub Committee regarding his professional and personal circumstances since the offences were committed.

The driver was given the opportunity to sum up. The Sub-Committee then retired to make its decision.

DECISION MADE:

That the application for a public carriage drivers licence made by the person named in report '4' be granted in accordance with the Local Government (Miscellaneous Provisions) Act 1976, subject to the applicant passing the standard public carriage tests required by the Council to be a licence holder.

REASON FOR DECISION:

The Chairman explained that the Sub-Committee had carefully considered the written and verbal evidence provided. The Sub Committee was grateful to the applicant for his frank, honest and detailed explanation of his professional and personal circumstances. Having considered the evidence the Sub Committee concluded that the applicant had demonstrated through his conduct since his conviction until the present day that he was a fit and proper person to hold a public carriage drivers licence.

It was noted that the applicant would be required to reapply for the licence in August 2019 at the same time as his residency status was due to be renewed.

THE MEETING RESUMED IN PUBLIC SESSION

91 APPLICATION FOR NEW PREMISES LICENCE - ZEPHYR, 6A CHRISTCHURCH ROAD

The Chairman made introductions and explained the procedure for the hearing which was agreed by all parties.

Licensing Sub-Committee, 12 December 2018

The Sub Committee considered an application for a new ‘shadow’ premises licence for Zephyr, 6a Christchurch Road, to allow regulated entertainment and supply of alcohol from 14:00 to 05:00 and late-night refreshment from 23:00 to 05:00.

The Licensing Officer introduced the report which had been circulated at ‘5’. The application had resulted in representations from two interested parties under the prevention of public nuisance licensing objective. It was noted that during the application process successful mediation had taken place between the applicant and Pollution Control, resulting in the applicant removing live music as a licensable activity from the application and agreeing an additional condition restricting the number of smokers outside the front of the premises to ten. Details of the mediation were set out in Appendix D of the report.

The following persons attended the Sub Committee and gave verbal evidence based on their written submissions:

- On behalf of the premises:
 - Mr Philip Day - Partner on behalf of Laceys Solicitors
 - Ms Natasha Hawa - applicant
- Interested Parties:
 - Ms Carrie Packer, Senior Student Services Officer, Arts University Bournemouth
 - Ms Jessica Hundrieser, General Manager, Wilson and Sharp

During the hearing the following points in relation to the application were clarified:

- The existing premises licence could continue to operate on its current conditions until further notice.
- The conditions of a shadow premises licence did not have to mirror exactly the conditions of an existing licence.
- The removal of live music as a licensable activity and the additional condition restricting the number of smokers outside the front of the premises to ten proposed for the shadow licence reflected an informal arrangement agreed between the current premises licence operator and Pollution Control since the noise abatement notice had been served.
- A responsible authority or any other person could at any time apply for the existing premises licence to be reviewed in relation to one or more of the licensing objectives, and at the same time request a review of the shadow premises licence.
- Section M b) of the application should read as follows: ‘...When the premises open until *19:00 hours* a minimum of 2 staff will be working and present in the front bar area. From *19:00 hours* this will increase to a minimum of 3 until close of business..’

Members of the Sub Committee asked various questions to all parties present during the hearing. All parties were given the opportunity to ask questions of one another and to sum up, before the Sub Committee retired to make its decision.

Licensing Sub-Committee, 12 December 2018**DECISION MADE:**

That the application for a new 'shadow' premises licence for Zephyr, 6a Christchurch Road, to permit regulated entertainment, the supply of alcohol from 14:00 to 05:00 and late-night refreshment from 23:00 to 05:00, be granted, subject to the following amendments:

- Removal of live music as a licensable activity from the premises licence.
- Additional condition as follows: 'No more than ten customers shall be permitted to smoke outside the front of the premises on Christchurch Road at any one time and those customers shall not be permitted to take drinks outside with them'.
- Amendment to Section M b) of application to read '...When the premises open until *19:00 hours* a minimum of 2 staff will be working and present in the front bar area. From *19:00 hours* this will increase to a minimum of 3 until close of business..'

In making its decision the Sub Committee stated that should the current premises licence be reviewed the conditions of the shadow premises licence would also be considered subject to such a review also being requested.

REASON FOR DECISION:

The Chairman explained that the Sub-Committee had taken account of the written evidence that had been submitted before the meeting along with the verbal submissions provided at the meeting.

The Chairman explained that the purpose of the hearing was not to review the current premises licence. The Sub Committee noted that there had been issues relating to public nuisance associated with the premises. The Sub Committee was mindful of striking a balance between protecting residential amenity and allowing the premises to operate. In this case there had been insufficient detail provided at the hearing by the interested parties to warrant amending the proposed conditions of the shadow premises licence in this respect. It was noted that the informal arrangement between Pollution Control and the current premises operator to restrict live music and the number of smokers allowed outside the front of the premises appeared to have had a positive impact.

The Chairman reminded all parties that a responsible authority or any other person could at any time apply for the existing premises licence to be reviewed in relation to one or more of the licensing objectives, and at the same time request a review of the shadow premises licence. The Sub Committee had noted the article on 'Shadow Licences - The Landlord's Safety Net' published by Poppleston Allen.

The Senior Solicitor advised all parties that any persons aggrieved by the decision would have the right of appeal to the Magistrates Court, and any such appeal should be lodged within 21 days of receiving the decision letter.

Licensing Sub-Committee, 12 December 2018**92 REVIEW OF PREMISES LICENCE - CAFÉ FRESCO GRILL, 142 OLD CHRISTCHURCH ROAD**

The Chairman made introductions and explained the procedure for the hearing which was agreed by all parties.

The Sub Committee considered an application to review the premises licence for Café Fresco Grill, 142 Old Christchurch Road. The Licensing Officer introduced the report which had been circulated at '6'. The application for review had been made on 30 October 2018 by Mrs Sarah Rogers on behalf of the Licensing Authority, on the grounds that the premises was not promoting the prevention of crime and disorder and public safety licensing objectives. This followed a joint out of hours visit made by Dorset Police and the Council's Licensing Team on 21 October 2018.

The report provided a summary of the licenses associated with the premises since 2005. The report included a copy of the application to review the premises licence and witness statements in support of the application. It was noted that no further representations had been received following notice of the review being given.

Following the publication of the report the Sub Committee had been provided with the following additional information circulated to all parties in advance of the hearing:

- Correspondence between the legal representative for the premises and between the Licensing Authority. In this the legal representative offered a condition relating to an amended plan which restricted access to certain areas by customers and guests of staff.
- An additional witness statement from Dorset Police regarding the visit made to the premises on 21 October 2018.

The following additional information was presented by the Licensing Authority at the hearing with the agreement of the legal representative for the premises:

- CCTV footage showing persons emerging into Fir Vale Road from the rear alleyway of premises on Old Christchurch Road at the time of the authorised officer's visit to Café Fresco Grill.
- A social media post from the door supervisor of Café Fresco Grill alerting people to authorised taxi licensing checks in the area.

The following persons attended the Sub Committee and gave verbal evidence based on their written submissions:

- On behalf of the Licensing Authority:
 - Mrs Sarah Rogers - Senior Licensing Officer
- On behalf of the premises:
 - Mr Philip Day - Partner on behalf of Lacey's Solicitors

Licensing Sub-Committee, 12 December 2018

- Mr Wardan Alashek - Premises Licence holder and Designated Premises Supervisor (DPS)

Members of the Sub Committee asked various questions to all parties present during the hearing. Mr Day explained that he and Mr Alashek, on his advice, did not feel in a position to respond to some questions, even if the hearing went into non-public session, as it may prejudice other legal proceedings which may be pursued in relation to the premises.

All parties were given the opportunity to ask questions of one another and to sum up, before the Sub Committee retired to make its decision.

DECISION MADE:

That the premises licence for Café Fresco Grill, 142 Old Christchurch Road, be revoked.

REASON FOR DECISION:

The Chairman explained that the Sub-Committee had taken account of the written evidence that had been submitted before the meeting, along with the additional information provided and the verbal submissions made at the meeting.

The Sub Committee considered the obstruction of an authorised and clearly identifiable officer of the Licensing Authority in carrying out their statutory duties of entry and inspection of a licensed premises to be extremely regrettable and an undermining of the prevention of crime and disorder licensing objective.

The Sub Committee had regard to paragraphs 11.20 and 11.23 of the Revised Guidance issued by the Home Office under Section 182 of the Licensing Act 2003. The Chairman referred in particular to the expectation 'that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify' in deciding which powers to invoke (11.20) and that 'where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence'(11.23).

The Sub Committee had considered the evidence provided by the Licensing Authority and the supporting witness statements and was clear what the concerns were. There was a lack of management in the premises on the night of the inspection on 21 October 2018, and this was indicative of how the premises was run. Mr Alashek, the now current Premises Licence holder and DPS, was on the premises at the time of the visit. Despite witnessing the behaviour of Mr Basem Mauhana, who we are now informed is only a customer, in verbally abusing the authorised officer, Mr Alashek had taken no action to intervene. He had made no effort to prevent Mr Basem Mauhana from obstructing the officer in undertaking a legitimate and lawful visit of the premises, and had chosen instead to continue serving customers on the grounds

Licensing Sub-Committee, 12 December 2018

that he was busy. This was in spite of the fact at that time although not the premises licence holder he was a director of the company holding the premises licence. The Sub Committee found this conduct to be completely unacceptable and not that expected from a responsible premises operator.

In considering the grounds for review cited by the Licensing Authority the Sub Committee noted that alterations had been made to the approved layout plan for the premises which had resulted in a wall and doorway being constructed. This construction completely obscured from view the areas of the licensed premises where suspected offences under the Health Act 2006 may have taken place, and where other activities could be occurring. It was noted that the obstruction of the officer had caused a delay in her ability to inspect the premises until the arrival of Police support, which may have facilitated the removal of customers from these areas. Customers were seen exiting the rear alley at the back of the premises on the CCTV footage shown. Once inspected Dorset Police and the Council Officer suspected that customers had been smoking because of the strong smell of smoke and shisha in the air and cigarette stubs in plant pots around the room.

Mr Basem Mauhana remains a customer of the premises and it appears those who should take responsibility in the premises have no desire to control the behaviour of such customers. There are concerns that customers will be allowed to disrupt authorised officers and display such behaviour again as the new Premises Licence Holder and DPS did not appeal too concerned by the behaviour.

Based on the evidence provided the Sub Committee had no confidence in the management of the premises or its ability to uphold the licensing objectives. Having considered the steps available to take action under its statutory powers the Sub Committee did not deem other measures sufficient to tackle the problems at the premises and therefore revoked the licence.

The Senior Solicitor advised all parties that any persons aggrieved by the decision would have the right of appeal to the Magistrates Court, and any such appeal should be lodged within 21 days of receiving the decision letter.

The meeting was adjourned between 10.15am - 10.20am, 10.22am - 10.32am, 11.45am - 11.58am, and 1.25pm - 1.55pm

The meeting closed at 2.00pm

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