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LICENSING & APPEALS SUB-COMMITTEE

Minutes of a virtual Hearing of the Licensing & Appeals Sub-Committee held at 09:30am on Tuesday 27th April 2021.

Under Regulations made under the Coronavirus Act 2020, the meeting was held virtually. Members of the public were able to view the virtual meeting via the District Council's website at www.derbyshiredales.gov.uk or via our YouTube channel.

PRESENT

Councillor Andrew Statham - In the Chair.

Councillors Graham Elliott and Michele Morley.

Eileen Tierney (Licensing Manager), Lee Gardner (Legal Services Manager) and Simon Johnson (Democratic Services Officer).

Mr Armond Dominic Frklic (Applicant) and Mr George Domleo (Applicant's Representative – Flint Bishop LLP).

Mr Brian Birch (Representation), Mr Robert & Mrs Barbara Jones (Representation) and Mr Alan Rogers (Representation).

355/20 – ELECTION OF CHAIRMAN

It was moved by Councillor Michele Morley, seconded by Councillor Graham Elliott and

RESOLVED
(Unanimously)

That Councillor Andrew Statham be elected as Chairman of the Sub-Committee

356/20 – LICENSING ACT 2003 - APPLICATION FOR VARIATION OF PREMISES LICENCE: PRESTON'S SPECIALITY COFFEE BAR, PRESTON'S GARAGE, DERBY ROAD, ASHBOURNE DE6 1LZ.

The Sub-Committee considered an application for a variation of Premises Licence made under Section 34 of the Licensing Act 2003, held in respect of Preston's Specialty Coffee Bar, Preston's Garage, Derby Road, Ashbourne DE6 1LZ.

The Chairman invited the participants to introduce themselves, asked whether any party wished the Sub-Committee to consider the application in private and confirmed that the Sub-Committee was quorate.

The Licensing Manager gave an outline of the application.

The Sub-Committee and the other parties were afforded an opportunity to request clarification of the Licensing Manager's report.

The Sub-Committee then heard representations from the following:

- Mr Robert & Mrs Barbara Jones.
- Mr Alan Rogers.
- Mr Brian Birch.

The Sub-Committee had the opportunity to question any of those making representation.

The Applicant, Mr Armond Dominic Frklic and the Applicant's Representative, Mr George Domleo were also afforded the opportunity to request clarification of any points.

Mr Armond Dominic Frklic and Mr George Domleo then presented the case for Preston's Speciality Coffee Bar.

The Sub-Committee had an opportunity to question the Applicant and the Applicant's Representative.

All parties were afforded an opportunity to request clarification of any points.

The Sub-Committee Members confirmed that they had sufficient information to make a decision and withdrew into private session to discuss their findings.

357/20 – DECISION

The Sub-Committee resumed in public session.

It was moved by Councillor Graham Elliott, seconded by Councillor Michele Morley and

RESOLVED
(Unanimously)

The Sub-Committee has heard from the Licensing Manager, Ms Eileen Tierney, Mr Armond Dominic Frklic the Applicant, Mr George Domleo the Applicant's Representative and those making representation objecting to the application. The Sub-Committee has also considered the written representations appended to the Report.

Following careful consideration of the representations put forward the Sub-Committee has resolved to approve the application to vary the Premises Licence as follows:-

Supply of Alcohol to be increased from 8pm to 10pm daily.
Hours the premises will open to the public increased from 8:30pm to 10:30pm.

A full Notice of Decision will be issued and sent out with 5 working days.

Rights of Appeal against this decision should be made to the Magistrates' Court acting for the petty sessional area in which the premises are located. You must do this in writing within 21 days of the date of the written Notice of Decision.

Hearing Closed: 11.08am

357/20 LICENSING & APPEALS SUB-COMMITTEE - DECISION (Licensing Act 2003)

**Record of proceedings of the Derbyshire Dales District Council's
Licensing & Appeals Sub-Committee held on Tuesday 27th April 2021 at
09.30am.**

Full name of Applicant: Mr Armond Dominic Frklic.

Premises Address: Preston's Speciality Coffee Bar, Preston's Garage, Derby Road,
Ashbourne DE6 1LZ.

Reason for attendance at the Sub Committee:

To determine an application for a variation of Premises Licence made under Section 34 of the Licensing Act 2003, to extend the current hours for the sale of alcohol for consumption on and off the premises, indoors and in the outdoor area to the rear of the premises, from 8:00pm to 10:00pm daily; and to extend the closing time of the premises from 8:30pm to 10:30pm.

Constitution of Committee:

Councillor Andrew Statham (Chairman).
Councillor Graham Elliott.
Councillor Michele Morley.

Representations made by:

- Mr Robert and Mrs Barbara Jones.
 - Mr Alan Rogers.
 - Mr Brian Birch.
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Names of others present:

Eileen Tierney – Licensing Manager.
Lee Gardner – Legal Services Manager.
Simon Johnson – Democratic Services Officer.

Premises' Representatives:

Mr Armond Dominic Frklic – Applicant.
Mr George Domleo – Applicant's Representative (Flint Bishop LLP).

1. The meeting was conducted in public, with the agreement of all parties.

The Sub-Committee withdrew into private session to consider its decision and were advised by the Sub-Committee legal representative that only evidence that was relevant to the four Licensing objectives could be taken into consideration and that it was important that any conditions attached to a Licence should be to promote the Licensing objectives.

2. Chairman's note of evidence (i.e. concise details of all oral and written details put before the Sub-Committee).

The Sub-Committee considered the report and comments made by the Licensing Manager including details of the application for a variation of Premises Licence to seeking to extend the current hours for the sale of alcohol for consumption on and off the premises, indoors and in the outdoor area to the rear of the premises, from 8:00pm to 10:00pm daily; and to extend the closing time of the premises from 8:30pm to 10:30pm.

The Sub-Committee heard from the Licensing Manager that there had not been any objections from the responsible authorities during the consultation period.

The Sub-Committee listened carefully to the representations by those present whom are resident to the rear of Preston's Speciality Coffee Bar and also considered all written representations.

Mr Frklic and Mr Domleo informed the Sub-Committee that the application would be for the variation of the current Premises License to allow the extension of hours from Supply of Alcohol from 8pm to 10pm and the Opening hours of the Premises from 8.30pm to 10.30pm.

Mr Frklic and Mr Domleo were questioned by both the Sub-Committee and those making representations on the impact of the increased opening hours would have on those making representations.

3. Findings of the Sub-Committee on questions of fact material to the decision (i.e. the relevant facts accepted from the evidence available).

On 1st March 2021 an application was received from Mr Armond Frklic to vary the existing Premises Licence held in respect of the Preston's Specialist Coffee Bar, Derby Road, Ashbourne DE6 1LZ.

The application seeks to extend the hours when the premises is open to the public from 8:30pm to 10:30pm and also for the sale of alcohol inside and outside the premises to 8:00pm to 10:00pm.

The Sub-Committee considered that the relevant Licensing objective is 'The Prevention of Public Nuisance and the Protection of Children. The Sub-Committee heard a number of representations regarding potential nuisance to properties bordering the premises and as to the potential to cause of nuisance.

The Sub-Committee further confirmed that the decision was based solely on the application to vary and not with regards to the existing Licence.

The Sub-Committee also confirm that in reaching its decision it had regards to the evidence presented in the report, the evidence presented at the Sub-Committee Hearing, together with the Council's Licensing Policy and statutory government guidance (sc182 Guidance).

The Sub-Committee in considering all the evidence and guidance **RESOLVED**:

That the application to vary the Premises Licence be granted as applied for.

Reasons for the Decision are detailed below.

4. Full text of unanimous decision.

RESOLVED
(Unanimously)

The Sub-Committee has heard from the Licensing Manager, Ms Eileen Tierney, Mr Armond Dominic Frklic the Applicant, Mr George Domleo the Applicant's Representative and those making representation objecting to the application. The Sub-Committee has also considered the written representations appended to the Report.

Following careful consideration of the representations put forward the Sub-Committee has resolved to approve the application to vary the Premises Licence as follows:-

Supply of Alcohol to be increased from 8pm to 10pm daily.
Hours the premises will open to the public increased from 8:30pm to 10:30pm.

A full Decision Notice will be issued and sent out within 5 working days.

Rights of Appeal against this Decision should be made to the Magistrates' Court acting for the Petty Sessional Area in which the premises are located. You must do this in writing within 21 days of the date of the written Notice of Decision.

Reasons for Decision:

Firstly the Sub-Committee considered the various representation questioning the advertising of the original licensing application and the application to vary.

The Sub-Committee confirmed that they were only considering the application to vary. The original application had been decided in November 2020 and even though the premises had not been operating as normal due to COVID restrictions, once residents had become aware of a new Premises Licence being granted they had the opportunity to legally challenge the decision, thus it was not for the sub-committee to consider this representation.

As for the current application, the applicant had confirmed that the variation application had been advertised in line with the regulations, whereas representations claim it had not been. In considering these representations the Sub-Committee was minded that the Licensing Authority had advertised the application on its website, no evidence was presented to back up the statement that it had not been properly advertised and various

representations had been received indicating that people were aware of the application. Therefore in considering the two conflicting statements, on the balance of probabilities, it was considered that the application had been advertised in line with the legislation.

The Sub-Committee also noted that there was a suggestion that there was something wrong with the Premises Licence holder applying for an extension to the hours soon after being granted the initial licence and that this was a tactic to slowly increase the hours. The Premises Licence holder is entitled to apply at any time to vary their licence, this is allowed by law and even if hours were increased slowly, if there was evidence of this becoming an unreasonable nuisance, the licence can be looked at again under review. This was therefore considered an irrelevant argument and not considered further by the Sub-Committee.

The Sub-Committee then considered which of the Licensing objectives were relevant to the application and it considered the relevant objective was the Prevention of Public Nuisance and Protection of Children.

Representations were received stating that all of the Licensing objectives were relevant but for the following reasons these were rejected.

There were a number of objections to the possibility of rowdy, boisterous and anti-social behaviour, which is covered under the Prevention of Public Nuisance and not under the objective of Crime and Disorder.

Therefore the only objection received regarding crime and disorder was the “venues that might attract younger people could be areas for drug activity.” Members noted that drug activity affects all ages and parts of society, just because younger people are involved does not increase the likelihood of drug activity, further there are no representation from the police evidencing drug activity in the area, or any known problems of drug dealing that may affect the premises. As such there was no evidence to back up this statement and it was rejected as a valid representation.

There were a number of representations regarding public safety as the premises is situated near a fuel storage facility. Whereas the Sub-Committee considered this to be a valid concern, the Sub-Committee must rely on the expert evidence of those responsible for fire safety, namely the Fire Service who are a statutory consultee on any licensing application and it was noted that the Fire Service made no representations against this application to vary. As such the Sub-Committee had no evidence to suggest that people smoking outside the premises created a risk of a fire hazard and thus this representation was rejected.

It further rejected the argument that those stopping for fuel might have “one for the road”. This could be said of any licensed premises, there is no evidence to support that statement as the drivers will still need to get back in their car and move it from the petrol station. There is also the counter agreement that as the premises is called a coffee bar, drivers may stop to have a rest and a coffee because they are tired and thus improving road safety and also having one drink is unlikely to put the driver over the drink drive limit. As such it was considered no merit to this representation.

The Sub-Committee then considered the obligations under the Licensing Act 2003 that it considered relevant, namely Prevention of Public Nuisance and Protection of Children.

Firstly representations stated the premises was in a residential area. The premises is situated on opposite a Co-op store, a fish and chip shop and a bakery. This is situated next to industrial units. There are properties abutting the premises but it was concluded that the area cannot be described as a purely residential.

Of the four representations, the concerns of issues of nuisance were worded as follows:-

- My objections are based on my concerns that the new licence may increase the possibility of public nuisance...
- Our objections are based on my concerns that the new licensing hours will increase the possibility of public nuisance...
- The potential for nuisance resulting from alcohol consumption late in the evening, of noise and boisterous behaviour is self-evident and also stating that consumption of alcohol increases the likelihood of bad language.
- My objections are based on my concerns that this new licence may increase the possibility of public nuisance....

The Sub-Committee noted that the Licensing Act 2003 is a permissive act, where unless there is good evidence to show that the premises has or it is extremely likely that it will cause nuisance, the licence should be granted. Even where there is evidence of possible nuisance, the act says conditions would be put on the licence to minimise the impact of these problems rather than refusal.

There is no absolute right in law for a landowner have peaceful enjoyment of his property, there is a balancing act between the enjoyment of the property and the right to individuals and businesses to carry on a trade earning a living for themselves, their employees and benefiting the economy as a whole.

The Sub-Committee did not accept that it was self-evident that alcohol consumption results in boisterous behaviour, if this was the case, then all establishments that sold alcohol would have to close unless there were no nearby residential premises.

Further, they noted that all the representations were regarding the concern of nuisance but there was no direct evidence that there would be and that was further confirmed where the Police and Environmental Health made no representation against the extension of hours.

The Sub-Committee further noted that if there was problem in the future, Environmental Health had legislation to address the problem and the Licensing Act 2003 allowed for the Premises Licence to be reviewed.

The Sub-Committee therefore concluded that there was no evidence to suggest that the extension of the operating hours and the hours to sell alcohol would have any impact on the Licensing objectives and thus the application was granted.

Chairman

Date: 27th April 2021.