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LICENSING & APPEALS SUB-COMMITTEE

Minutes of a Meeting held on Monday 8 June 2015 in the Committee Room, Town Hall, Matlock at 12.30pm

PRESENT

Councillor Steve Flitter - In the Chair

Councillors Tom Donnelly and John Tibenham

Eileen Tierney (Licensing Manager), Simrean Sidhu (Barrister) and Annette Reading (Democratic Services Assistant). Stacey Lindfield, Senior Licensing Assistant, attended as an observer.

Alan Cherry, Applicant, assisted by his partner, Helen Cherry

Roger Etchells, representing Michael Turner, Margaret Newton and The Kathleen Newton Trust

16/15 – ELECTION OF A CHAIRMAN

It was moved by Councillor Tom Donnelly, seconded by Councillor John Tibenham and

RESOLVED That Councillor Steve Flitter be elected as Chairman of the Sub-Committee
(Unanimously)

17/15 – LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE FOR CHERRY'S CAFÉ, THE ANNEXE 190 SOUTH PARADE, MATLOCK BATH DE4 3NR

The Sub-Committee considered an application for a premises licence.

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

The Licensing Officer gave an outline of the application.

Those who wished to make representations and had given notice within the required time of their intention to do so, were invited to state their case. The Committee heard oral evidence against the application from:

Roger Etchells, representing Michael Turner, Margaret Newton and The Kathleen Newton Trust.

Alan Cherry, the applicant, spoke in support of the application.

The Committee had an opportunity to question all parties. All parties were invited to seek clarification of points that had not been sufficiently explained.

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

18/15 – DECISION

The Sub-Committee resumed in public session.

It was moved by Councillor Tom Donnelly, seconded by Councillor Tibenham and

RESOLVED
(Unanimously)

That Derbyshire Dales District Council Licensing & Appeals Sub-Committee, having heard and considered the application for a Premises Licence for Cherry's Café, the Annexe, 190 South Parade, Matlock Bath DE4 3NR ("the premises") and having considered all submissions made on behalf of the Applicant and the objectors have decided to grant the application as follows:

PROPOSED LICENSABLE ACTIVITIES AND TIMES OF OPERATION	
Sale of alcohol for consumption on and off the premises:	Between the hours of 10am and 10pm on any day of the week.
Premises Open to the Public:	From 8:30am until 10:30pm any day of the week.

Footnote:

The Committee make this decision on the understanding that the licence applies to the inside of the premises only. The Committee understand that the Applicant does not intend to place tables and chairs on the roadside outside of the premises.

Full Decision Notice is attached below.

Meeting Closed 1.10pm

LICENSING & APPEALS COMMITTEE DECISION

(Licensing Act 2003)

Record of proceedings of Derbyshire Dales District Council's Licensing & Appeals Sub-Committee held on Monday 8 June 2015

Full name of Applicant: Alan David Cherry

Premises Address: Cherry's Café, at the Annexe, 190 South Parade, Matlock Bath, DE4 3NR ("the Premises")

Reason for attendance at the Sub Committee: To determine an application for a Premises Licence

CONSTITUTION OF COMMITTEE

Councillor Steve Flitter (Chair)
Councillor Tom Donnelly
Councillor John Tibenham

APPLICANT

Alan David Cherry assisted by his partner, Helen Cherry

NAMES OF OTHERS PRESENT (WRITE "NONE" WHERE APPROPRIATE)

Simrean Sidhu – Barrister
Eileen Tierney – Licensing Manager
Stacey Lindfield – Senior Licensing Assistant (as observer)
Annette Reading – Democratic Services Assistant

APPLICANT'S WITNESSES

None

OBJECTORS

Roger Etchells, representing Michael Turner, Margaret Newton and The Kathleen Newton Trust.

OTHERS

Ms Newton

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

The Subcommittee 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. Chairpersons note of evidence (ie concise details of all oral and written details put before the Committee)

Report of the Licensing Officer, including details of representations received
Personal representations by Roger Etchells, representing Michael Turner, Margaret Newton and The Kathleen Newton Trust
Personal evidence given by the applicant

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

The Sub-Committee found that the application did not cover any outside areas related to the café and that there was no intention to open until 10pm every night. The hours applied for were to cover the eventuality of occasional late openings.

4. Full text of unanimous decision

That Derbyshire Dales District Council Licensing & Appeals Committee, having heard and considered the application for a Premises Licence for Cherry's Café, the Annexe, 190 South Parade, Matlock Bath DE4 3NR ("the premises") and having considered all submissions made on behalf of the Applicant and the objectors, the Committee have decided to grant the application as follows:

PROPOSED LICENSABLE ACTIVITIES AND TIMES OF OPERATION	
Sale of alcohol for consumption on and off the premises:	Between the hours of 10am and 10pm on any day of the week.
Premises Open to the Public:	From 8:30am until 10:30pm any day of the week.

The Committee make this decision on the understanding that the licence applies to the inside of the premises only. The Committee understand that the Applicant does not intend to place tables and chairs on the roadside outside of the premises.

Conditions to be attached to the licence

APPLICATION FOR PREMISES LICENCE

Appendix 2

MANDATORY CONDITIONS AND MEASURES VOLUNTEERED IN THE OPERATING SCHEDULE
PART OF THE APPLICATION

CHERRY'S CAFÉ, THE ANNEXE, 190 SOUTH PARADE, MATLOCK BATH, DE4 3NR

MANDATORY CONDITION: SUPPLY OF ALCOHOL

- (1) No supply of alcohol may be made under the premises licence:
 - a. at a time when there is no designated premises supervisor in respect of the premises licence, or
 - b. at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- (2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

MANDATORY CONDITION: IRRESPONSIBLE PROMOTIONS

1. The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
2. An irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises:-
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

MANDATORY CONDITION: FREE TAP WATER

1. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

MANDATORY CONDITION: PROOF OF AGE SCHEME

- (a) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (b) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (c) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
 - (i) a holographic mark, or
 - (ii) an ultraviolet feature.

MANDATORY CONDITION: REQUIREMENT TO MAKE SMALL ALCOHOL MEASURES AVAILABLE

The responsible person shall ensure that:-

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

MANDATORY CONDITION: SALE OF ALCOHOL - DUTY + VAT

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1—
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(a);
 - (b) "permitted price" is the price found by applying the formula—
$$P = D + (D \times V)$$

where—

- (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(a).

CONDITIONS CONSISTENT WITH OPERATING SCHEDULE:

These are the steps that the applicant intends to take to promote the four licensing objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm), which will be translated into conditions should the licence be granted:

Prevention of Crime and Disorder

- (a) Staff will be vigilant in spotting trouble-makers and will refuse to serve anyone who appears to be drunk and disorderly.
- (b) A strict no-tolerance approach to underage persons attempting to purchase alcohol will be adopted.
- (c) Toughened glassware shall be used for drinks throughout the premises – bottled products will be poured into glasses prior to serving.
- (d) Only sealed/unopened products will be offered for sale to consume off the premises.
- (e) There will not be any alcoholic drinks promotions.
- (f) Tables will be cleared of glassware regularly.
- (g) Staff will be vigilant in checking the premises for drugs misuse.
- (h) Crime prevention notices will be displayed.

Public Safety

- (a) External lighting will be provided and maintained at the premises.
- (b) The Premises Licence Holder will comply with all reasonable requirements of the Fire Officer.
- (c) All safety equipment shall be checked and maintained and staff will be trained to deal with emergencies.
- (d) Risk assessments will be carried out and monitored..

The Prevention of Public Nuisance

- (a) Prominent, clear and legible signs will be placed at the exits requesting

customers to leave the premises and the area quietly and respect the rights of local residents.

- (b) No drinks will be served after 10pm..

The Protection of Children from Harm

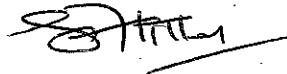
- (a) All staff will be trained on the laws relating to age restrictions.
- (b) Staff training records will be kept and made available on request by an officer of the Responsible Authorities.
- (c) No alcohol will be served to under 18s, and the Challenge 25 age verification policy will be in operation and signage will be clearly displayed at the entrance to and throughout the café.
- (d) Acceptable forms of identification will be PASS Cards – accredited proof of age card, a photo driving licence or a passport. Failure to produce satisfactory proof of age will result in a refusal of sale.
- (e) Records will be kept of all refusals to sell alcohol, and will be made available on request to officers of the Responsible Authorities.
- (f) Children must be accompanied by an adult whilst on the premises.

Reasons for the decision:

The Sub-Committee did not consider that the application was detrimental to the licensing objectives.

Date 08/06/2015

Members signature:



APPEALS TO THE MAGISTRATES' COURTS

Many of the enforcement actions and decisions made by Derbyshire Dales District Council carry the right of appeal to the Magistrates' Court. This means that if you do not agree with the decision that the District Council has made you may contact the Magistrates' Court and ask them to formally review it. For example, anyone served with a formal enforcement notice has the right to appeal against that notice within 21 days of its service.

How do I make an appeal?

The right to appeal is normally set out on the reverse of the notice or in a letter that accompanies it.

The Derbyshire Dales District Council area is served by two Magistrates' Courts:

- North East Derbyshire and Dales Magistrates' Court, Tapton Lane, Chesterfield S41 7TW, Tel: 01246 224040, and
- Southern Derbyshire Magistrates' Court, St Mary's Gate, Derby DE1 3JR, Tel: 01332 362000

Which Court should I contact?

Generally speaking the North East Derbyshire and Dales Magistrates' Court serves the northern part of the District and Southern Derbyshire Magistrates' Court serves the southern part of the District.

The Court that you would need to contact to make an appeal will depend on the address to which the notice or other enforcement decision relates. If you are unsure which Court would deal with your appeal, we recommend that you contact one of them to check.

Where can I get help?

If you think you need help we would recommend that you speak to a solicitor who would be able to assist you with the Court processes.

The District Council is not able to recommend any particular firm of solicitors but would suggest you check in Yellow Pages or a local services directory.

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