

TANDRIDGE DISTRICT COUNCIL

LICENSING SUB COMMITTEE

Minutes of the meeting of the Sub-Committee, hosted from the Council Offices, Oxted via Zoom on the 21st July 2021 at 10.00 a.m.

ATTENDEES:

Sub-committee members:

Councillors Farr, Groves and Steeds (present in the Council Chamber)

Council Officers:

Ian Garrod - Licensing Officer (connected via Zoom)

Lidia Harrison - Head of Legal Services (present in the Council Chamber)

Vince Sharp - Democratic Services Officer (present in the Council Chamber)

Relevant parties

Ruben Osie - agent representing the applicant (connected via Zoom)

Steve Burnett - solicitor representing the objector (connected via Zoom)

Geoff Lewis – objector (connected via Zoom)

1. ELECTION OF CHAIR

Councillor Steeds was elected chair of the meeting.

2. APPLICATION FOR THE GRANT OF A PREMISES LICENCE AT 36 STATION ROAD WEST, OXTED

The owner wished to convert this premises from a clothes shop to a food outlet. An application for a premises licence had been submitted by Masood Mahmood which sought permission for the sale of alcohol between 10.00am and 10.30pm on Mondays to Sundays.

Geoff Lewis, who lived and worked next door to the premises, had objected to the application on the following grounds:

- potential nuisances caused by noise and unpleasant odours;
- the fact that the current planning permission (granted on appeal) for change of use of the premises from A1 (retail) to mixed use A3/A5 (restaurants and cafes/takeaways) was conditional upon the opening hours being limited to between 08:00 and 17:00 each day;
- the proposed location of the refuse bins presented a potential fire risk, as supported by a witness statement from an independent fire safety consultant (Phil Barry of CWB Fire Safety).

The above mentioned planning permission was based on the refuse bins being stored in the service road to the rear of the premises. However, the owner of the service road had since refused permission for the road to be used for this purpose, hence the need for the premises licence applicant to secure an alternative location.

Following the publication of the agenda pack, the following additional documents had been circulated to the Sub-Committee members:

- (i) further representations from Masood Mahmood in support of his licence application – e-mailed on 16th July at 14:22
- (ii) an A3 site plan regarding fire safety / bin storage issues from Steve Burnett - e-mailed on 20th July at 14:21
- (iii) evidence to support the ownership of the above mentioned service road – e-mailed on 20th July at 18:18
- (iv) advice from Rob Jordan of Surrey Fire & Rescue (Crew Commander – Business Fire Safety) following his site visit on 20th July, explaining that, in consultation with Masood Mahmood, he had identified a preferred alternative location for the refuse bins, namely an external brick built storage space which could be converted for this purpose – e-mailed on 20th July at 17:26.

In light of (iv) above, Steve Burnett had advised that the witness statement from CWB Fire Safety would not be relied upon and that Phil Barry would not be giving evidence.

Ian Garrod introduced his report.

Ruben Osie presented the application. He explained that the current business was no longer commercially viable and that the proposed restaurant would have the added advantage of employing more people. He confirmed that the owner wished to cooperate with the objector and was willing to accept all but two of the requested licence conditions, those two exceptions being:

- “12 No fumes or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.*
- 13 No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.”*

Ruben Osie responded to questions from Councillors concerning measures to mitigate against the potential for public nuisance; the nature of the proposed restaurant; and the fact that a fire risk assessment still needed to be undertaken.

Steve Burnett presented the objector’s case and argued that the floor plan (page 35 of the published pack) did not comply with the requirements of the Licensing Act as it lacked information regarding location and type of fire safety equipment. He asserted that the application failed to demonstrate that users of the premises would be safe and that a more robust floor plan should have been submitted at the outset in accordance with statutory requirements.

He also argued that, in light of the conditions attached to the current planning permission, approval of the licence would be contrary to paragraph 14.3 of the Council’s Statement of Licensing Policy which stated that, *“Licensing applications should not be a re-run of the planning application and should not cut across decisions made by the Planning Committee or following appeals against decisions taken by that Committee ...”*.

Geoff Lewis addressed the Sub-Committee and outlined his objections to application.

Steve Burnett responded to questions from Ruben Osie.

Ruben Osie explained his intention to seek fresh planning permission to enable the restaurant to function once the premises licence had been granted. Steve Burnett countered that the required planning permission should be obtained first, after which the owner could apply for a variation to the premises licence.

In their closing statements:

- Ruben Osie concluded that the required premises licence would not be implemented until fresh planning permission (allowing the restaurant's opening hours to synchronise with the conditions of the premises licence) had been granted. He explained that the floor plan would be updated in consultation with Surrey Fire & Rescue and Environmental Health and that a fire risk assessment would be undertaken. In response to criticisms about the floor plan, he argued that Surrey Fire & Rescue had not expressed any concerns.
- Steve Burnett refuted suggestions that his client was being vexatious and reiterated concerns regarding the adequacy of the floor plan. He considered that the licence application should be re-submitted with a more robust, compliant floor plan and that, in any event, a licence should not be granted in contravention of paragraph 14.3 of the Council's Statement of Licensing Policy. However, in the event of a licence being granted, the conditions on pages 59 and 60 of the pack should be imposed.

The hearing closed at 11.45pm when those participating via Zoom left the meeting, having been advised that the Sub-Committee's decision would be communicated later in the day. Councillors Steeds, Farr and Groves began their deliberations with Lidia Harrison and Vince Sharp in attendance.

The Sub-Committee's decision was as follows:

The Sub-Committee acknowledges that:

- (i) **the floor plan within the application is incomplete and not compliant with relevant legislation (in terms of the proposed fire safety measures) and that a fire risk assessment for the premises and proposed bin store is awaited;**
- (ii) **paragraph 14.3 of the Council's Statement of Licensing Policy states that, "... Licensing applications should not be a re-run of the planning application and should not cut across decisions made by the Planning Committee or following appeals against decisions taken by that Committee"...**; and
- (iii) **in connection with (ii) above, and notwithstanding the recent submission of a fresh planning application, the relevant planning appeal decision by the Planning Inspectorate, dated 20th November 2020, was to restrict opening hours to between 0800 and 1700 each day.**

In view of the above, and without prejudice to the outcome of current / future relevant licensing and planning applications, the Sub-Committee determines that:

- A. the current application for a premises licence be refused on the grounds that:
- (i) it failed to demonstrate that the following licensing objectives would be met:
- '*public safety*' (specifically in relation to fire safety)
 - the '*prevention of public nuisance*' (with reference to the content of the above-mentioned planning appeal decision, which is still in force); and
- (ii) paragraph 14.3 of the Council's Statement of Licensing Policy should be adhered to.
- B. Mr Mahmood be invited to submit a further premises licence application:
- with a more comprehensive floor plan in accordance with relevant legislation and a fire risk assessment, following consultation with Surrey Fire & Rescue; and
 - once the new planning application has been determined.

The applicant may appeal against this decision to the magistrates' court, within 21 days beginning with the date of notification of this decision.

Rising 1.25 pm