

CHILTERN DISTRICT COUNCIL

MINUTES of the Meeting of the LICENSING SUB COMMITTEE held on 8 OCTOBER 2015

PRESENT: Councillor J J Rush - Chairman

Councillors: M J Harrold
C M Jones
E A Walsh (reserve)

5 DECLARATIONS OF INTEREST

Councillor Walsh declared she had a personal interest under the Code of Conduct because she knew Mr King and Mr & Mrs Shelley. However, the reserve Councillor Walsh only observed, did not participate in the discussions or retire with the other members when they made their decision.

Councillor C Jones declared she had a personal interest under the Code of Conduct because she knew Mr & Mrs Shelley, who used to live in the same road as her. Having adjourned the Hearing for 15 minutes for legal advice to be taken, Councillor Jones confirmed that she had not reached a pre-determined view on the application.

All parties confirmed they had no objections to the membership of the Sub Committee.

6 METRO LOUNGE, 63-65 HILL AVENUE, AMERSHAM, BUCKS, HP6 5BX

Members were requested to consider an application for a variation of the Premises Licence for the Metro Lounge, 63-65 Hill Avenue, Amersham. The application sought to increase the footprint of the licensed premises to include a pavement strip at the front of the building to provide outside seating for their customers as referred to in the Licensing Officer's report a copy of which all the parties had received prior to the Hearing ("the Report").

During the consultation period valid representations were received from three local residents and from the Environmental Health Department relating to the 'prevention of public nuisance' and 'public safety' licensing objectives. The Environmental Health Officer had proposed four new conditions to address the Department's concerns if the application was allowed which had been agreed by the applicant prior to the Hearing.

The Members and officers introduced themselves and the Chairman asked those present who wished to speak to introduce themselves. Mr Pete Rosser (Melrose Associates) and Mr Kieron Butcher (Area Manager of Loungers Limited) were present to speak for the application. For the objectors Mr Brian Shelley was present to speak for himself. Mr Peter King was also present to speak for himself and to represent Mrs Joy Houston, who was not in attendance.

The Chairman explained the Council's Hearings procedure and the Licensing Officer then introduced the Report tabling a number of photographs of the proposed seating area and street scene to help inform the discussions.

The Licensing Officer addressed the Hearing summarising the Report and referred to the four proposed conditions as set out in the Schedule to the Report which would in their view address the concerns raised in the representations. The Licensing Officer also confirmed that Bucks County Council had issued a License on 23rd September 2015 permitting tables and chairs to be placed on the pavement outside of the Licensed Premises.

The Licensing Officer was asked a number of questions by Mr Shelley regarding agreement of the proposed conditions and the proposed barriers. Councillor Harrold also asked questions regarding the width of the pavement and whether the pavement had been measured. The Licensing Officer responded that the Environmental Health Department had measured it at 3 metres. The applicant added that according to their measurements it was 4 metres wide. Councillor Harrold advised that he had measured it as 3.4 metres at one end and 3.6 metres at the other end leaving 1.5 metres to walk along if the application was allowed.

The objectors were then asked to address the Hearing. Mr King outlined two primary concerns; the first was the potential noise that an outside seating area late in the evening would generate but his main objection was the risk to public safety posed by the width of the pavement potentially leading pedestrians to use the road. He argued that at peak times the corner saw a high volume of traffic from school children and shoppers as well as prams and mobility scooters.

Mr Shelley concurred with both of these points. Regarding the issue of noise he argued that between his home and the proposed outdoor seating there was no physical barrier to stop sound carrying straight across to it. He also queried whether the opening hours of the premises were to remain the same and how the Alcohol Free Zone sign opposite the Metro Lounge applied to their application for outdoor seating where alcohol would be served. The Licensing Officer explained that the premises opening hours would remain the same and that the sign indicated a Designated Public Places Order, which meant that if people were to cause a public nuisance in the area the police could be called and alcohol confiscated if appropriate. The Order did not mean that no alcohol at all could be consumed in that area.

Mr Shelley's second concern was that the pavement would be unsafely narrowed by the seating area, at 2 metres wide it would greatly constrict the flow of pedestrian traffic and lead people to step out into the flow of traffic. Unlike further down Hill Avenue this traffic was not separated from the pavement by parked cars so pedestrians would step directly into the path of traffic which had also been referred to by Environmental Health. No questions were put to the objectors on these points.

The applicants were then invited to address the Hearing. Mr Rosser explained that the Metro Lounge was a family friendly continental style food premises which had opened 3 weeks ago. That the Loungers Group Limited has a strong training system and operates 70 other premises in the Country.

Approximately half of these operate similar outdoors seating arrangements and they have received no complaints. Mr Rosser stated that the concerns which reflected potential for noise nuisance and public safety should be restricted to the proposed use of the pavement and that legitimate concerns had also been raised by Environmental Health. He confirmed that they had agreed to all the conditions proposed by the Environmental Health Department being the only Responsible Authority to make representations, which he briefly outlined, which addressed their concerns and those raised by the objectors. Mr Rosser referred to there being approximately 5 tables with 3 chairs around each one in the outside area. Mr Rosser confirmed that the tables and chairs would be brought inside, that this would be the responsibility of the management at the premises and that the 1.5m requirement would not be encroached upon if the application was allowed.

He also confirmed that they had applied for and received a Pavements License and that a copy of the license was available at the Hearing. This license had required a Street Works Technician come to the premises and verify that the pavement was suitable for the proposed seating arrangements. He therefore asked the Members to grant the application.

In response to questions from the Sub Committee regarding the use of the pavement area it was explained that the outside seating area would allow for buggies to be placed between the tables rather than at the end of the tables so that they would not infringe on the 1.5 metre walkway. That there was also a buggy park inside the premises for any overflow. Regarding the 9pm finishing time the applicants responded that that signs and management intervention would be employed to bring people inside at 9pm to enforce the ending time. Smokers, while they would be able to smoke outside the premises, would not be able to use the seating as it would be stacked up and cordoned off. Concerning the seating this was required to be put away by the end of trading hours by one of the proposed conditions, however, the management would see that it was done as early as practically possible by their staff. Finally it was explained that there would be a banner barrier around the seating area, at the top and bottom of it, which would be rolled up and put away.

The objectors also put several questions to the applicants. Concerning the number of tables in the seating area they asked how many would be put there, because if too many seats were added there might not be enough space. This could cause people, or particularly prams and mobility scooters, to spread into the pedestrian footway. Mr Butcher confirmed that the management would not overload the seating area and would keep space available for objects like prams. It was also raised that bringing customers inside at 9pm sharp would be difficult. Mr Butcher replied that Loungers had accepted the 9pm requirement and were confident that they could keep to it. Mr Rosser also assured the Objectors that in order to comply with the 9pm restriction the tables and chairs would be stacked up and placed against the premises external wall and that the banner barrier would be rolled up and put away. That a telephone number for the Duty Manager would also be made available to residents if they were disturbed by noise.

Members also asked questions of the Applicants including compliance with the proposed condition regarding the 9pm restriction. Mr Rosser again confirmed that the tables would be stacked up and placed against the wall. That the

banner barrier would be placed at the beginning and end of the outside area and would be rolled up and put away. Mr Rosser also confirmed that it had been an oversight that the outside seating area had not been included when applying for the Premises Licence.

The Chairman then moved the Hearing to consider the proposed conditions and Informatives. In light of the assurances from the Applicant, the following amendment was proposed to Condition 14:

- 1) That the table and chairs be stacked and placed against the exterior wall of the premises. The external banner barrier will also be rolled up and put away.

The Licensing Officer had no objections to this change and it was agreed by the applicants. The Objectors raised no objections to the proposed conditions.

The Chairman then asked for any closing submissions and the Licensing Officer and the Applicants briefly addressed the Hearing referring to the conditions addressing the concerns raised. Mr King stated that his concerns had been well aired. All parties confirmed that they had received a fair hearing and all issues had been heard. The Chairman in closing the Hearing thanked everyone present and confirmed that the parties would be notified of the decision of the Licensing Sub-Committee within 5 working days.

The Sub-Committee then retired to make its Decision.

After considering all the evidence, the Sub Committee:-

RESOLVED that the application to vary the Premises Licence for the Metro Lounge, 63-65 Hill Avenue, Amersham, Bucks HP6 5BX be allowed in full with immediate effect, subject to the Mandatory and other Conditions and the Informatives set out in the Schedule to the Report, as amended by the Sub-Committee, as set out in full in the Decision Notice attached to and forming part of these minutes.

The meeting ended at 3.40 pm

CHILTERN DISTRICT COUNCIL

LICENSING ACT 2003, AS AMENDED

APPLICATION BY LOUNGERS LIMITED FOR A VARIATION OF A PREMISES LICENCE

DECISION OF THE LICENSING SUB-COMMITTEE SITTING ON 8TH OCTOBER 2015.

The Licensing Sub-Committee had before it an application from Loungers Limited to vary the existing Premises Licence reference number 14/00836/LAPRE for the Metro Lounge, 63-65 Hill Avenue, Amersham, Bucks HP6 5BX.

The variation applied for was an amendment to the Premises Licence Plan to increase the footprint of the Licensed Premises to include a strip of pavement at the front of the building for external tables and chairs for customers as shown on plan numbered LNG2953.04B appended to the application form and the Licensing Officer's report ("the Report") a copy of which all the Sub-Committee Members and Relevant Parties had received.

No other variation to the Premises Licence was sought.

Relevant representations objecting to the application received from Chiltern District Council's Environmental Health Department and three local residents were listed in the Report at paragraph 4 and a copy thereof appended to the Report.

The Licensing Sub-Committee, having listened to all the evidence, submissions and responses thereto and having read all the material before it including the Report and photographs tabled by the Licensing Officer showing tables and chairs outside the Licensed Premises and of the street scene, was satisfied on balance that in all the circumstances and for the Reasons given below that this Application be **ALLOWED IN FULL** and that this variation will take immediate effect

Subject to the Mandatory Conditions, the Informatives and the existing and additional Conditions set out in the Schedule to the Report but amended by the Sub-Committee as follows -

New Condition 14 amended to now read - Tables and chairs located on the pavement at the front of the premises shall not be occupied after 21:00 hours each day for any purposes and will be stacked and placed against the exterior wall of the premises. The external banner barrier will also be rolled up and put away.

This decision is considered to be justified as being appropriate for the promotion of the following Licensing Objectives

- Public Safety
- Prevention of Public Nuisance

and proportionate in consideration of the written representations and submissions made at the Hearing.

Reasons.

The Licensing Sub-Committee considered carefully the Objectors' written representations and submissions made at the Hearing which related mainly to noise nuisance late at night and public safety concerns arising from the proposed

variation to the Premises Licence. It also considered the location of the Licensed Premises generally and in relation to the Objectors premises.

The Licensing Sub-Committee noted that whilst the Council's Environmental Health Officer had also raised concerns relating mainly to the Public Nuisance and Public Safety licensing objectives, the Officer had proposed four new conditions to be imposed on the Premises Licence which would address her concerns if the application were granted.

The Licensing Sub-Committee also noted that the Licensed Premises was not in an Alcohol Free Zone but was in an area which was subject to a Designated Public Places Order. This meant that alcohol could be consumed outside but it could be confiscated by the Police if appropriate as a result of anti-social behaviour.

Regarding the Objectors' concerns relating to noise mainly late at night, the Licensing Sub-Committee considered that in view of the location of the Licensed Premises generally and in relation to the Objectors' premises, the use of the external area until 9pm would not lead to an increase in noise levels so as to cause a public nuisance.

Regarding public safety, it was noted that the Objectors' concerns about the effect of allowing tables and chairs to be placed on the pavement related mainly to the narrow width of the pavement, its frequent use by toddlers and school children and fears that the pavement would be obstructed by buggies and pushchairs and that pedestrians would have to step into the road when passing the Licensed Premises.

Whilst the Licensing Sub-Committee shared the concerns regarding the width of the pavement, it also took into consideration the Applicant's submissions that there was a buggy park located inside the Licensed Premises, that there would be sufficient space between the tables for pushchairs and buggies to be safely stored, that in the Applicant's experience the banner barrier was effective in preventing any obstruction to pedestrians and that the outside area would be supervised by senior members of staff.

The Licensing Sub-Committee also noted that Buckinghamshire County Council had issued a Licence on 23rd September 2015 permitting tables and chairs to be placed on the pavement outside the Licensed Premises.

The Licensing Sub-Committee also took into consideration that some of the concerns were based on what might happen if the application was allowed. In considering this the Licensing Sub-Committee had regard to the Home Office Guidance and in particular paragraph 9.42 and that decisions should be evidence-based.

Regarding the proposed conditions, it was noted that the Applicant had agreed to these conditions and that the Objectors had not raised any objection to them at the Hearing. It was further noted that the Applicant had assured the Objectors that the tables and chairs would be stacked and placed against the premises external wall and that the banner barrier would be rolled up and put away so that the tables and chairs could not be used after 9pm and that the Applicant agreed to an amendment to the proposed condition numbered 14 to reflect this.

Therefore in granting this application in full the Licensing Sub-Committee considered that the variation to the Premises Licence was reasonable and appropriate for this type of premises and for the location.

That the new conditions as amended would result in effective noise control and ensure the safety of pedestrians when walking past the Licensed Premises and that these together with the existing conditions and mandatory conditions imposed on the Premises Licence were sufficient, proportionate and appropriate measures if properly implemented to address the Objectors concerns regarding noise and public safety.

The Sub-Committee, whilst making this decision, also took into account the ability of the Objectors to make representations in the future which will lead, where evidence shows the Licensed Premises is the cause of public nuisance and/or noise, to a review of the Premises Licence where steps could be taken to address the issues. Accordingly the Objectors should be reassured that the Licensing Authority does have significant powers when dealing with a premises on review if appropriate and proportionate in all circumstances.

The Licensing Sub-Committee also had regard to

National Guidance;
The Council's Licensing Policy;
The Human Rights Act 1998, as amended and
The individual merits of this case

before reaching this decision.



Head of Legal and Democratic Services and
Clerk to the Licensing Sub-Committee

DATED 8TH OCTOBER 2015.

ATTENTION IS DRAWN TO THE ATTACHED RIGHTS OF APPEAL

YOUR RIGHT OF APPEAL
Licensing Act 2003, Section 181, Schedule 5

Rejection of applications relating to premises licences

1 Where a licensing authority-

- (a) rejects an application for a premises licence under section 18,
- (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
- (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
- (d) rejects an application to transfer a premises licence under section 44, the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2 (1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision-

- (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
- (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend-

- (a) that the licence ought not to have been granted, or
- (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision

Variation of licence under section 35

- 3 (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.
 - (2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.
 - (3) Where a person who made relevant representations in relation to the application desires to contend-
 - (a) that any variation made ought not to have been made, or
 - (b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,he may appeal against the decision.

If you wish to appeal you must do so within 21 days beginning with the day you were notified of the decision.

The postal address for the Magistrates' Courts that cover the Chiltern Area is:

Milton Keynes Magistrates' Court, 301 Silbury Boulevard,
Witan Gate East, Milton Keynes, Buckinghamshire MK9 2AJ