



LICENSING SUB-COMMITTEE

MEETING : Tuesday, 11th October 2016

PRESENT : Cllrs. H. Norman, Hansdot and Pullen

Officers

Lisa Jones, Food, Licensing and Markets Manager

Vikki Fennell, Solicitor from One Legal

Richard Barnett, Licensing and Enforcement Officer

Tony Wisdom, Democratic Services Officer

Also in Attendance

Michael Griffiths, Counsel - Gloucestershire Constabulary

Jaine Simner, Licensing Manager - Gloucestershire Constabulary

Mark Mansfield, Licensing Officer - Gloucestershire Constabulary

APOLOGIES : None.

1. ELECTION OF CHAIR

Councillor Norman was appointed Chair for the meeting.

2. INTRODUCTIONS AND PROCEDURES

Members of the Sub-Committee, Officers and interested persons present introduced themselves and the Chair outlined the procedure to be followed during the meeting.

3. DECLARATIONS OF INTEREST

No declarations were made on this occasion.

4. APPLICATION UNDER SECTION 34 OF THE LICENSING ACT 2003 BY MASOOD AHMAD SHAMSI TO VARY AN EXISTING PREMISES LICENCE FOR ZAM ZAM PIZZA AND FRIED CHICKEN, 144 EASTGATE STREET, GLOUCESTER, GL1 1QU

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Licensing Officer's Report

The Licensing and Enforcement Officer presented his report which invited the Sub-Committee to consider an application under Section 34 of the Licensing Act 2003 by Masood Ahmad Shamsi to vary an existing premises licence for Zam Zam Pizza and Fried Chicken. 144 Eastgate Street.

He outlined the background to the application and the detail of the variation applied for detailed at paragraph 3.5 of the report. He drew Members' attention to the non-standard hours requested for Bank Holidays, Christmas and New Year's Eve to match the Friday and Saturday hours requested.

He noted that a representation had been received from Gloucestershire Constabulary that was contained in Appendix 3 of the report. He noted that additional documents had been received from the Constabulary and copies had been sent to the Applicant and Members.

There were no questions of the Officer.

The Applicant's Representative

Mr Alex Clennett, on behalf of the Applicant Masood Ahmad Shamsi, stated that the Applicant had been operating in excess of the hours permitted by his existing licence and he wished to be granted the same hours as other businesses in the locality.

Mr Clennett admitted that there had been disorder issues associated with the premises and the Applicant believed that the result of the recent EU referendum had affected his business as he had experienced some anti-foreigner attitudes.

Mr Clennett stated that the Applicant had questioned why it was safe for other businesses to operate longer hours when it was not considered safe for him to operate those hours.

He stated that the staff employed on the premises were well trained in security issues. He cited a number of premises in the locality which operated longer hours than those currently permitted for Zam Zam.

He referred to the Police representation and refuted the suggestion that any extension of licensing hours in the area would have an adverse effect on crime and disorder and public nuisance.

He believed that it would help to have all premises operating the same hours as the businesses would then be able to help each other. People leaving other premises would not have to wait so long for food orders which could be a cause of trouble.

Councillor Pullen asked if the Applicant would employ door staff if the conditions on the licence required them. Mr Clennett stated that staff were trained how to deal with situations but stated that if it was a requirement of the licence the Applicant would have to employ door staff.

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The Chair asked if Mr Clennett was able to comment on the attitude to the Police demonstrated by staff at the premises on 7 August. Mr Clennett was not able to comment but stated that many problems arose when customers were waiting for food orders after hours.

The Food, Licensing and Markets Manager asked if the premises was a member of City Safe. Mr Mansfield was able to confirm that they were not.

There were no questions of Mr Clennett from the Police.

Representation by Gloucestershire Constabulary

Mr Michael Griffiths, Counsel for Gloucestershire Constabulary, stated that the application had been prompted by the warning letter sent to the Applicant following the incident on 7 August. There was evidence on this day that the premises were operating one hour beyond licensed hours.

He drew Members' attention to the attitude of the gentleman in charge of the premises at that time and believed that the warning letter was a reasonable and proportionate response to a serious offence which if prosecuted could result in a significant fine or a custodial sentence.

He referred to the evidence provided by PC Reid which included a photograph showing a customer being served at 04.50 hours.

He stated that this was proof of significant breaches of the licensing regime and the Applicant's disregard for that regime.

He referred to the recognised legal principle that those who seek equity should come with clean hands.

He noted that the premises were located within the Cumulative Impact Zone and noted that Eastgate Street was the epicentre for crime and disorder in the County. He confirmed that the licences in the area were not all for the same hours and the argument for equity failed in view of the significant breaches of the licensing regime.

He noted that some premises employed door staff licensed by the Security Industry Authority and he referred to Page 30 of the Council's Licensing Policy Statement which stated that the Licensing Authority was empowered to require the employment of SIA licensed door staff.

He noted that the best applications for variations should not come from those applicants who were currently unable to comply with the licensing regime.

The Chair asked why the Police had not sought a review of the licence for these premises. She was advised that the Police were very close to requesting a review on this premises but the application to vary had been submitted prior to them requesting a review. The Police also commented that another premises in a similar situation had employed door staff and voluntarily reduced their hours.

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Councillor Pullen noted that other premises were open until 05.00 and asked if they experienced problems. He was advised that problems occurred at other premises but the Police worked with them until Officers were satisfied with the arrangements.

The Chair referred to the evidence of PC Lloyd regarding the licence check. Mark Mansfield stated that the Officer had been made to feel really uncomfortable and this was unusual for a routine licence check. He was not aware of any similar previous incidents.

The Applicant had no questions of the Police.

The Sub-Committee was then shown CCTV and Police bodycam footage of the incident on 17 July 2016.

Summing Up by the Licensing Officer

The Licensing and Enforcement Officer outlined the options available to Members detailed at Paragraph 2.1 of the report.

Summing Up by the Police

Mr Griffiths believed that the application was a straightforward matter. The premises were situated in a Cumulative Impact Zone, The application had been prompted by the Applicant deliberately flouting the licensing regime; in some instances serving nearly two hours beyond licensed hours. He believed the appropriate course of action would be for the Sub-Committee to refuse the application as the imposition of conditions would not be appropriate in the circumstances. He suggested that consideration should not be given to granting a further application for a variation until such time as the Applicant could provide evidence of compliance with the licensing regime.

Summing Up on behalf of the Applicant

Mr Clennett conceded that the video footage had shown a nasty scene. He was not sure what a doorman could have done other than closed and locked the doors.

He believed that it showed drink and drug fuelled behaviour not directly attributable to Zam Zam.

He reiterated that other premises operated longer hours and the Applicant wished to have the same hours.

He stated that Applicant maintained that he had been forced to close on time in order to comply with licensed hours for seven weeks and if others had longer hours please could he have the same.

Decision

The Chair, Members of the Sub-Committee and the Solicitor withdrew to consider their decision. Upon their return the Chair read the following statement:-

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The Sub-Committee has considered very carefully the application for a variation of a premises licence at Zam Zam Pizza & Fried Chicken. It has given due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted Statement of Licensing Policy.

The Sub-Committee has considered representations both written and given orally today.

The Sub-Committee noted that the premises are located within an area identified as suffering from high levels of crime and disorder and labelled as a Cumulative Impact Zone.

The Sub-Committee considered the Cumulative Impact Policy and particularly pages 11 – 14 of the Council's Licensing Policy.

The Sub-Committee noted in particular that:-

- i. One effect of the CIP is that a rebuttable presumption applies to applications for or variations of premises licences.
- ii. The rebuttable presumption is that such applications shall ordinarily be refused.
- iii. Licensing Policy 4.18 provides that the onus is upon applicants to demonstrate through their Operating Schedule and, where appropriate, supporting evidence that the operation of the premises will not add to the cumulative impact already being experienced. This has not been achieved by the applicant today.
- iv. The Sub-Committee is bound to take into consideration the statutory guidance which stresses at paragraph 2.1 that licensing authorities should look to the Police as the main source of advice on crime and disorder.
- v. The Sub-Committee were seriously concerned by the evidence presented by the Police showing a flagrant disregard of the licensing regime by the Applicant.

On this basis, the application to vary the hours of the licence is refused in its entirety.

The interested parties are reminded that there is a right of appeal to the Magistrates' Court within twenty-one days of receipt of the decision.

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**Time of commencement: 6.15 pm
Time of conclusion: 7.40 pm**

Chair