

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **9th October 2009**

Present:

Cllr. Goddard (Chairman);
Cllrs. Mrs Heaton, Kemp

Also Present:

Cllrs. Mrs Hicks, Holland, Norris, Wedgbury

Licensing Officer, Legal Advisor, Environmental Control Officer, Member Services & Scrutiny Support Officer

271 Election of Chairman

Resolved:

That Councillor Goddard be elected as Chairman for this Meeting of the Licensing Sub-Committee.

272 Declarations of Interest

Councillor	Interest	Minute No.
Mrs Hicks	Code of Conduct – Personal but not Prejudicial – as a Member of Kingsnorth Parish Council	274
Holland	Code of Conduct – Personal but not Prejudicial – as a Member of Kingsnorth Parish Council	274
Wedgbury	Code of Conduct – Personal but not Prejudicial – as a Member of Kingsnorth Parish Council and as Ward Member	274

273 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 24th September 2009 be approved and confirmed as a correct record.

274 Double Garage, 9 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY - Application for a Premises Licence

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Officer then gave a brief summary of her report. The application was for a Premises Licence. The application had been made in the proper manner. Representations had been received hence the determination coming before Members. The premises were a detached double garage belonging to the residential property 9 New Rectory Lane and situated within a solely residential close within the Park Farm area. A location plan was provided in Appendix F to the report. The application proposed to permit off sales of alcohol 24 hours a day, seven days a week. The application also proposed the provision of late night refreshment 23:00 – 05:00 seven days a week. The application stated that all sales would be made over the telephone or via the internet and that no orders would be allowed to be changed at the point of delivery. Electronic payments only would be taken at point of delivery.

A representation has been received from the Environmental Control Officer who visited the premises and subsequently spoke to the applicant regarding her concerns that there was inadequate provision made for the prevention of public nuisance. The concern was regarding the applicant's intention to regularly load and unload the delivery vehicle throughout the night and the fact that this was likely to cause disturbance to the occupiers of the two properties opposite the garage. 20 parties had made representations. A summary of these representations was provided in Appendix C to the report. Copies of the letters were contained in Appendix D to the report.

All of the representations were from parties living in the area. The representations had a number of common themes in terms of the licensing objectives and they could be summarised as follows:

- The prevention of public nuisance and crime and disorder with reference to the use of domestic garage to store alcohol and the potential for break-ins.
- The concern about antisocial behaviour within the vicinity of the premises and the increased noise in regard to the fact that the application was for 24 hours a day.
- The prevention of public nuisance with additional noise being generated from the 24 hour delivery service, with the increased movement of vehicles and the regular loading and unloading of the delivery vehicle.
- The fact that it was a wholly residential area and that residents felt it was an inappropriate place for a business.

Under section 35(5) of the Licensing Act 2003, representations were relevant if they were about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) were made by an interested party or responsible authority within the prescribed period, were not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.

Mr Mayne, the applicant, addressed the Sub-Committee. He advised Members that he felt it was important to clarify matters regarding the application. He had applied for a 24 hour seven days a week license to allow for flexibility and expansion of the business. Should the business grow then he would look at moving away from the area. He intended to run the business Fridays and Saturdays from 22:00 until 05:00 with reduced hours on a Sunday which rendered many of the objections invalid. No bottles were to be used; only cans, and he would use plastic crate holders to transport merchandise. In respect of the objection due to doors shutting this could not be controlled but he assured Members that he did not foresee an increase in noise as it was to be a one man business and stock replenishment would take place between 09:00 and 17:00. He would not return to the premises during the night unless it was necessary. The area was not solely residential as suggested in some of the representations; there was a builder and a decorator in the area who stored their equipment at their properties. There had been no objection raised by the Police. Deliveries would be made to fixed addresses and only to those who provided identification. As it was to be a small operation, traffic movements would be minimal as would the hours of operation.

In response to comments/questions from Members, Mr Mayne advised the Sub-Committee that he would only accept orders placed over the internet and once an order had been submitted it could not be changed at the stage of delivery. He would be implementing the Think 21 scheme and would not deliver to anyone who could not provide identification.

The Environmental Control Officer addressed the Sub-Committee. She advised Members that she had concerns relating to deliveries and frequent traffic movements. She drew attention to a number of photographs that she had taken of properties in New Rectory Lane which showed the proximity of the premises to its neighbours. The garage of number 9, the application premises, was a third of the garden boundary to number 8. Whilst the Council's website advised that complaints could not be made regarding the noise made by car doors this was purely in relation to domestic situations. The applicant had indicated that he intended to operate on Fridays and Saturdays however this would be when the majority of the Close would be at home, she was unsure as to how there would not be any noise made during that time. Background noise dropped off later in the evening and should any of the residents wish to sleep with their windows open then they would more than likely not be able to due to the increase in noise from the vehicle and garage. Regular noise disturbance would need to be looked at. She was unsure how the applicant would be able to carry enough stock to prevent him from having to return to the premises in the middle of the night.

Mr Mayne advised that he would work on predicted sales forecasts and carry as much stock as he felt necessary. He felt that an angelic picture had been made of the Close when it was a regular occurrence for the children of the Close to return home in the early hours of the morning.

The Environmental Control Officer advised the Sub-Committee that she was unsure of how the applicant would predict sales and that the capacity of his car would be finite. She concluded by saying that there were still concerns which had not been overcome and it was important to note that the premises would be only 8 metres away from number 8 New Rectory Lane.

In response to questions/comments from Members the Environmental Control Officer advised that the area in question was no bigger than the size of the Council Chamber. Mr Mayne confirmed that he would be using his car to make deliveries. The inclusion of late night refreshment on the application was to allow for expansion of the business in the future, initially he had no intention to provide late night refreshments. Should he decide to provide late night refreshment then it would not be from his premises he would be engaging with a local business to provide that part of the service.

Mr Ciccone, of Kingsnorth Parish Council, addressed the Sub-Committee. He advised Members that he was the Chairman of Kingsnorth Parish Council and supported the residents in objecting to the application. They believed that a license should be granted, but for an appropriate premises, as this one was not conducive for a residential area. Ellingham Industrial Estate was a 3 minute drive away where the units were secure and the operating hours suggested by the applicant would not cause a problem. All parties had a joint responsibility and the license should be refused or withheld until an alternative premises was found.

Mrs Bowen-Nelmes, an interested party, addressed the Sub-Committee. She advised Members that she lived at number 29 New Rectory Lane and was representing 11 households. The up and over garage doors would need to be slammed to be closed which would contribute to the noise nuisance. The concept of using the garage as a warehouse was ill conceived in a domestic location and was not in the public interest. The road was used as a route to schools and would put at the risk the safety of children. The business had the potential to undermine all four of the licensing objectives. Interrupted sleep patterns would have an effect on the emotional and physical wellbeing of the residents. There were 14 children that lived in the vicinity of the premises, ranging from 4years to 15years, and there was a need to protect their rights. She requested that the Sub-Committee refuse the application.

Mrs Warren, an interested party, addressed the Sub-Committee. She advised Members that she lived at number 8 New Rectory Lane and the garage in question was side on to her garden and 30ft from her bedroom window. She was concerned that car lights and noise from opening and closing the garage would disturb her sleep and would have an effect on daily life. She supported the other residents of New Rectory Lane and hoped that the application would be refused.

Mr Gardner, an interested party, addressed the Sub-Committee. He advised Members that he had lived at number 4 New Rectory Lane since it was built in 1994. The construction of his garage, with the exception of the roof tiles, was the same specification as number 9. There had been no security or improvement measures suggested by the applicant. The up and over doors were of lightweight construction and there was no conceivable way of opening and closing them without making noise. The walls were of single skin construction. Although the applicant had made a commitment that his vehicle would contain enough stock for orders placed he would have to return should new orders be placed which would result in the opening and closing of the garage doors and thus awakening the neighbours. The effects that this would have on the children in the area were serious and concerning. A domestic double garage was incapable of resisting burglaries and in reality should the license be granted it would cause 24 hour disruption and create an unmanageable security risk. He hoped that the Committee would reject the application.

Mr Francis, an interested party, addressed the Sub-Committee. He advised Members that he lived at number 16 New Rectory Lane and objected to the application. Ashford Borough Council had carefully located industrial estates in locations isolated from residential areas. In relation to crime and disorder the risk of breaking and entering into the premises itself and surrounding properties was increased. The increase in traffic would result in the younger residents being affected. New Rectory Lane was used as a through road to Tesco and the Civic Centre and the idea of a premises in that location was against the spirit of a residential area. He felt that there would be serious repercussions should the license be granted.

Councillor Wedgbury, the Ward Member, addressed the Sub-Committee. He advised Members that he was representing the residents of New Rectory Lane. Park Farm was a residential area and was designed to not have any commercial uses when it was developed. When the residents purchased their homes they felt secure in the knowledge that the covenants placed on their homes would prevent commercial enterprises being set up. He was disappointed but not surprised that the Police had not commented on the application nor opposed it. It was from his personal experience that a sledgehammer could open a garage door with one blow. He felt that if it became apparent that alcohol was being stored at the address then there would be a substantial rise in crime and criminal activity which could result in the breaking into of other addresses in the vicinity. The Police were aware of the facts but were negligent. There was potential for people to turn up and try to place an order whereby the applicant could deliver to a car across the road as they would have passed the pavement and made a delivery. He urged the Committee to refuse the license. If the applicant wished to apply for a license for a small commercial unit at an alternative location then he would be pleased to speak on his behalf.

Councillor Mrs Hicks addressed the Sub-Committee. She felt that the applicant had seen a window of opportunity but had not thought the idea through. Planning permission had not been applied for for the change of use. This was an important decision for the Borough.

The Licensing Officer confirmed that a delivery could be made by crossing the road.

Mr Mayne advised the Sub-Committee that he had been excluded from the meeting of Neighbourhood Watch that had discussed the application, had he been invited he would have been able to set the record straight. He would not operate 24 hours a day seven days a week however he had requested the hours to allow for flexibility for the businesses expansion. The Committee could impose a restriction on hours should they wish to do so.

The Licensing Officer then summed up the nature of the application and the issues for the Sub-Committee to consider. She reminded the Sub-Committee that they may grant the license with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

LHS/LS
091009

Resolved:

That the application for a Premises Licence be refused on the grounds of public nuisance caused by noise and light from deliveries.

KL/
LHSX0941