

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE  
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD  
on THURSDAY, 16 AUGUST 2012**

**Present:** Councillor Sandy Taylor (Chair)

Councillor Gordon Blair	Councillor Robert G MacIntyre
Councillor George Freeman	Councillor Donald MacMillan
Councillor Fred Hall	Councillor Alex McNaughton
Councillor Alistair MacDougall	Councillor James McQueen

**Attending:** Charles Reppke, Head of Governance and Law  
Sheila MacFadyen, Senior Solicitor  
Mr Mohammed Hassan-Zadeh, Applicant  
Mr McIver, Applicant's Agent  
Jo Rains, Environmental Health Officer

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were intimated from Councillors Rory Colville, Robin Currie, David Kinniburgh and Richard Trail.

**2. DECLARATIONS OF INTEREST**

None declared.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF A LATE HOURS CATERING LICENCE (THREE IN ONE, DUNOON)**

The Chair welcomed everyone to the Hearing and asked that participants introduce themselves. Thereafter he outlined the procedure that would be followed.

Mr Reppke advised that a late representation had been received from Environmental Health Services outwith the 28 day period allowed for objections and representations to be made and that the Environmental Health Officer was in attendance and would be able to advise of the reason why the objection was submitted late. It was for the Committee to decide whether or not they would wish to take this late objection into consideration. The Chair invited submissions from the Objector and from the Applicant.

Ms Rains advised that this matter had been raised at an Anti Social Behaviour meeting and that further information was requested from the Police to assist with her report to this Committee. She advised that once the information was submitted by the Police she had lodged her objection 2 days after the deadline date.

The Applicant's Agent, Mr McIver accepted that it was a matter for the Committee to decide whether or not to consider this late objection but

commented on how long it had taken the Environmental Health Officer to make her representation and that the reason for it being late was to await information from the Police who were not even objecting to the Application.

### **Motion**

That the late objection should be considered as it would be difficult for the Committee to come to a decision without knowing the views of the Environmental Health Officer.

Moved by Councillor Freeman, seconded by Councillor McQueen.

### **Amendment**

That the late objection should not be considered from the Environmental Health Officer.

Moved by Councillor Hall, seconded by Councillor MacDougall.

The Motion was carried by 5 votes to 4 and the Committee agreed to accept the late objection from the Environmental Health Officer.

The Chair then invited the Applicant to speak in support of his Application.

### **Applicant**

Mr McIver, on behalf of the Applicant, advised that the premises Three in One would be known to some Members and that the Applicant had been operating successfully here for over 11 years and that his business was well patronised. He confirmed that the Applicant had adhered to the present conditions attached to his licence and that no complaints had been made about his business which employed a mix of 20 part time and full time staff. He advised that the premises was situated in the centre of Dunoon close to a number of liquor licensed establishments. He referred to the objections made by the Environmental Health Officer which were predicated upon observations undertaken on 15 /16 October 2010 nearly 2 years ago and made reference to a number of points raised by the Environmental Health Officer in her representation in respect of Ferry Brae and Argyll Gardens. Mr McIver advised it was his understanding that these 2 locations have been a place where people have congregated for some time even before Mr Zadeh's business was in operation and that some people will hang around for no particular reason. He noted that there were no complaints recorded against the Three and One for noise disturbances. Mr McIver also referred to the police incidents recorded over a period of 3 years. He stated that there were 33 incidents over a period of 36 months and of these 33 only 7 related directly to the Three and One and that each of these incidents related to staff just doing their job. He advised that there was always the potential for noise to rise when patrons were leaving liquor licensed premises and asked how blame for this can be lain at the door of the takeaway premises. He advised that there has not been a single complaint about the operation of the Three in One premises and that this business contributed hugely to the economy of Dunoon. He referred to the Bombay restaurant trading until 3 am. He advised that it would be unfair not to grant the renewal of the late hours catering licence based on out of date evidence from the Environmental Health Officer and that the noise

reports were 2 years old. Mr McIver advised that no complaints or objections had been made by local residents and that there was nothing to connect the noise disturbance directly to the Three and One premises. He advised that the business has operated successfully for a number of years and that the application deserved to be renewed.

The Chair invited the Environmental Health Officer to ask the Applicant questions and Ms Rains confirmed she had no questions.

The Chair invited Ms Rains to speak in support of her objection.

### **Objector**

Ms Rains referred to the contents of her representation and advised that the basis of her objection was to protect the local residents and community of Dunoon from noise disturbance in the late hours of the morning and the report dated 2010 was made at the request of the Anti Social Behaviour Officer. She referred to Argyll Gardens being a focal point where people congregated and where noise can happen. She advised that the Three in One operating a late hours catering also acted as a focal point for people to congregate. She acknowledged that she had received no complaints from residents in the area and that it would be the Police that would receive any complaints. She advised that the premises was run well and the issue was with the people outside the premises. She recommended that late hours catering establishments should close 30 minutes before liquor licensed premises.

The Chair invited the Applicant to ask the Environmental Health Officer questions.

### **Questions to Objector**

Mr McIver asked if a similar monitoring exercise had been undertaken prior to 2000 and Ms Rain replied that a similar exercise was conducted 6 years ago and did not know of any before 2000.

The Chair invited Members to ask the Applicant and Objector questions.

### **Members' Questions**

Councillor MacDougall asked why no complaints were received during the Christmas, New Year and Cowal Gathering period and Ms Rains advised she could not offer an explanation other than there may have been a greater Police presence during these times.

Councillor Hall referred to residents and guests in the hotel having as many rights as the business proprietor and customers to which Mr McIver agreed.

Councillor Hall referred to the customers in restaurants sitting inside leading to noise being limited to inside restaurants as opposed to takeaway establishments where the noise would be outside when customers leave with their food and Mr McIver agreed with this and advised that the Bombay restaurant also provided a takeaway service.

Councillor Hall referred to the British Crime survey advising that many incidents go unreported. Mr McIver agreed but it was only possible to comment on those that were reported.

Councillor Hall asked if Mr McIver agreed that the impact of noise was from the customers leaving the premises and not from the premises. Mr McIver advised that there was a need to have persuasive evidence that the problem was connected to the premises in question.

Councillor Freeman referred to the number of incidents reported and asked if this was more or less what would be expected and if less than one per month was reasonable. Ms Rains advised that it was unreasonable and that there should be no complaints.

Councillor Blair referred to the delivery service provided by the premises and Mr Zaheh confirmed this was only up until midnight.

Councillor McNaughton asked Ms Rains if she accepted that the incidents and noise could relate to other premises and not the Three in One. Ms Rains advised that more people gathered in the street where premises were still open and the noise would not be from the premises but from the people.

Councillor MacIntyre commented that surely the noise could be attributed to the whole area and not just the Three in One.

Councillor Hall asked Ms Rains if she agreed humans had a need to eat and sleep and Ms Rains replied yes.

Councillor Hall asked Ms Rains if she agreed that residents and householders can't control when they might be disturbed by noise and Ms Rains replied yes.

Councillor Hall asked Ms Rains if she agreed that if customers were hungry and the food premises shut earlier than the pub then they could leave the pub early to obtain food and Ms Rains replied yes.

Councillor Freeman asked what the current opening times were. Mrs MacFadyen confirmed they were 11 pm – 1 am Sunday – Thursday and 11 pm – 3 am Friday and Saturday.

The Chair invited the Objector and Applicant to sum up.

## **Summing Up**

### **Objector**

Ms Rains advised she had nothing further to add.

### **Applicant**

Mr McIver advised that the existing business had operated successfully for 11 years and that no objections had been received from local residents or the Police.

The Chair asked the Applicant and Objector to confirm they had received a fair hearing and both confirmed this to be the case.

Mrs MacFadyen advised for information that the amendment in respect of the clocks going forward was not part of the application.

### **Motion**

That the application for renewal of late hours catering licence be granted.

Moved by Councillor Freeman, seconded by Councillor MacIntyre

### **Amendment**

That the late hours catering licence be restricted to 2.00 am for Fridays and Saturdays.

Moved by Councillor Hall, seconded by Councillor Taylor.

The Motion was carried by 7 votes to 2 and the Committee ruled accordingly.

### **Decision**

Agreed to grant the renewal of the late hours catering licence on the existing basis for the Three in One premises.

(Reference: Report by Head of Governance and Law, submitted)