

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 19 SEPTEMBER 2012**

Present: Councillor Sandy Taylor (Chair)

Councillor Gordon Blair	Councillor Alistair MacDougall
Councillor Robin Currie	Councillor Robert G MacIntyre
Councillor Mary-Jean Devon	Councillor Donald MacMillan
Councillor George Freeman	Councillor Alex McNaughton
Councillor Fred Hall	Councillor James McQueen
Councillor David Kinniburgh	Councillor Richard Trail

Attending: Charles Reppke, Head of Governance and Law
Sheila MacFadyen, Senior Solicitor
Archie McIver, Applicant's Representative
Mary Watt, Environmental Health Officer, Objector

1. APOLOGIES FOR ABSENCE

An apology for absence was intimated from Councillor Rory Colville

2. DECLARATIONS OF INTEREST

None declared.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR
RENEWAL OF LATE HOURS CATERING LICENCE (K WAI WONG,
ORIENTAL EXPRESS, HELENSBURGH)**

Prior to consideration of business the Chair advised that a late letter of objection had been received and he invited the Head of Governance and Law to explain the procedure that would need to be followed in respect of this late representation.

Mr Reppke advised that the late representation in proper form had been received just before the start of this meeting and that the Objectors were in attendance to explain why this was late. He explained that it would be for the Committee to hear why the objection was late and to decide whether or not to take it into consideration. He advised that if the Committee were minded to take this late letter of objection into consideration they would need to adjourn the meeting to another day to allow the Applicant the proper period of notice for consideration of this objection.

The Chair invited the Objectors to explain why their representation was submitted late. They confirmed that they had not realised this licence was up for renewal and that it had only been brought to their attention recently.

The Chair invited the Applicant's representative to comment on the Objectors' reasons for the late representation. Mr McIver advised that in all the years this is

the latest objection he has ever encountered. He advised that it would appear that the appropriate notice advising of this renewal had been displayed on the premises from 13 June until 4 July 2012 with objectors and supporters having 28 days from 13 June 2012 to comment and that to wait until 19 September 2012, with the greatest respect, was beyond the pale.

The Chair then invited the Committee to consider whether or not they wished to take this late letter of objection into consideration.

Councillor Hall advised that the only opportunity for people to see the renewal notice in the window would be if they were looking at the menu. He advised that in order to get the full picture of the impact this licence will have on the community would be to hear all objections.

Councillor Currie advised he had the opposite view and that he could see no reason why the Objectors waited 3 months to submit their objection so it should not be heard.

Councillor Freeman advised that he sympathised with the views of Councillor Currie. He stated that if the Committee were to accept this late objection this would mean there would be a need to put the hearing back to another day which could lead to the Applicant incurring additional costs in respect of legal representation.

Councillor Kinniburgh referred to lack of knowledge of Objectors in respect of procedures and that in his opinion their objection should be heard.

Councillor Trail sympathised with Councillor Currie. He advised that the notice went up on 13 June 2012 and must have remained there until now if the Objectors have only just seen it. He advised that in his opinion rules must be adhered to.

Motion

To agree that the late objection should be taken into consideration and that the hearing be scheduled for another day.

Moved by Councillor Fred Hall, seconded by Councillor David Kinniburgh.

Amendment

To agree not to take the late objection into consideration.

Moved by Councillor Robin Currie, seconded by Councillor Richard Trail.

The Amendment was carried by 8 votes to 5 and the Committee resolved accordingly.

The Chair outlined the procedure that would now be followed and asked participants to introduce themselves.

The Chair then invited the Applicant's representative to speak in support of the Application.

Applicant

Mr McIver advised that this was an application for renewal of a late hours catering licence for a Chinese take away for the following hours: Sunday and Thursday 11 pm – 1.30 am, Monday to Wednesday 11 pm to 12.30 am and Friday and Saturday 11 pm to 2.30 am and invited the Committee to renew the application.

The Chair invited the Objector to asked questions and Mrs Watt advised she had none.

The Chair then invited Mrs Watt to speak in support of her objection.

Objector

Mrs Watt referred to the contents of her letter of objection advising that Argyll and Bute Council's Environmental Health department and Strathclyde Police have been working closely to target anti social behaviour and noise associated with revellers leaving licensed premises when they close at 2 am. The associated noise, litter and anti social behaviour are having an adverse effect on the surrounding community. She advised that catering establishments open after the licensed premises have closed can impact on patrons not dispersing from the surrounding area for up to an hour later as they act as a focal point. She advised that there were five licensed premises in the vicinity of this establishment, two of which have licenses till 2 am. She referred to residential properties above the establishment and nearby residential flats.

The Chair invited Mr McIver to ask Mrs Watt questions and he confirmed he had no questions.

The Chair invited Members to ask questions.

Members' Questions

Councillor Currie asked if the opening hours requested in the application were the same as the current opening hours and Mr McIver replied yes.

Councillor Currie referred to the two complaints of noise specifically regarding patrons congregating at catering establishments and asked if this was generic or specifically in relation to the Oriental Express. Mrs Watt advised that one of the complaints related to the premises.

Councillor Currie asked over how many years was this complaint made. Mrs Watt advised that this was a complaint that had been received and was not over a particular period of time. She advised that these types of complaints were difficult to deal with.

Councillor Currie asked why only one complaint would be difficult to deal with. Mrs Watt advised that the difficulties were in relation to patrons congregating at late hours catering establishments which could not be dealt with under the Environmental Protection Act 1990.

Councillor Devon asked if a 2.30 am closing time was the normal closing time for other catering establishments in the area. Mrs Watt advised that all have been renewed recently and only two, including this one, were for 2.30 am, all the rest chose to close at 1.30 am.

Councillor Kinniburgh asked Mr McIver if he had any knowledge of the amount of business conducted between 1.30 and 2.30 am at the premises. Mr McIver advised that according to his client business at that time was substantial both from customers and staff leaving licensed premises.

Councillor Freeman asked Mrs Watt if she would agree that due to the location of the Oriental Express in relation to other premises it would be difficult to pin point if all the noise was coming from just one premises. Mrs Watt replied yes.

Councillor Kinniburgh asked where the other premises that had a late hours catering license to 2.30 am was located. Mrs Watt advised that this was on East Clyde Street.

Councillor Blair asked if the Committee agreed to restrict opening hours to 1.30 am would this not lead to patrons moving onto the other premises that were open until 2.30 am. Mrs Watt advised yes, this would be possible.

Councillor Trail asked if this establishment was just a take away business and Mr McIver replied that was his understanding.

The Chair invited both the Objector and Applicant to sum up.

Summing Up

Objector

Mrs Watt referred to Mr McIver's comment about the substantial level of business conducted between 1.30 and 2.30 am and referred again to the noise of patrons congregated at these premises which may go on until 3 am.

Applicant

Mr McIver referred to the number of complaints made over the last three years and that only one of these related specifically to the premises. He advised that there was no information that these premises were causing concern, that there was no information that they were causing a problem and no justification as to why this application should be refused. He advised that in the absence of anything specific he would expect this application for renewal to be granted.

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

Debate

Councillor Hall advised that the history of anything was not necessarily a predictor of the present or the future. He referred to being in the Police for 31 years and it was his opinion that the majority of people tolerate the intolerable and that no complaints does not necessarily indicate than anti social behaviour

does not take place. If premises are open people will go to them. He advised that the Applicant's representative stated that the premises was substantially busier when licensed premises closed.

Councillor Kinniburgh advised he agreed with Councillor Hall and if the premises were closed at 2 am patrons could leave the licensed premises earlier in order to obtain food. He advised that this establishment was close to a number of licensed premises and that the silent majority was out there and that the number of complaints received bear no relation to the problem.

Councillor Currie advised that the premises has been well run over the last three years with only one complaint. He saw no reason not to grant the application.

Councillor Freeman referred to 2.30 am as being the middle of the night and this was an important factor in respect of the local community.

Councillor Trail advised that he would agree with an earlier closing time of 2 am and that this was no reflection on the running of the premises.

Decision

Agreed to grant the renewal of the application for a late hours catering license for the following opening hours:- Sunday and Thursday 11 pm – 1.30, Monday to Wednesday 11 pm to 12.30 am, and in respect of Friday and Saturday 11 pm to 2 am, rather than as applied for given the likelihood of disturbance to residential properties as set out in the objection.

Having moved an amendment which failed to find a seconder, Councillor Robin Currie asked that his dissent be recorded.

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