

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 16 FEBRUARY 2011**

Present: Councillor Daniel Kelly (Chair)

Councillor Rory Colville	Councillor Alister MacAlister
Councillor Robin Currie	Councillor Neil Mackay
Councillor Vivien Dance	Councillor Donald MacMillan
Councillor Mary-Jean Devon	Councillor Roderick McCuish
Councillor David Kinniburgh	Councillor Alex McNaughton
Councillor Bruce Marshall	Councillor Al Reay

Attending: Charles Reppke, Head of Governance and Law
Sheila MacFadyen, Senior Solicitor
Graeme Forrester, Trainee Solicitor
Applicant
Mr Wright, Applicant's Agent
Inspector Davidson, Strathclyde Police
Mr MacLeod, Objector's Agent

Apologies: Councillor Gordon Chalmers Councillor James McQueen

1. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR A LATE HOURS CATERING LICENCE: THE CREW, 20 LONGROW, CAMPBELTOWN

The Chairman introduced himself and asked his fellow colleagues to do likewise. He outlined the procedure that would be followed at the meeting and invited the Head of Governance and Law to speak to the issue of a late representation by Strathclyde Police.

Mr Reppke advised that the response from Strathclyde Police had been received outwith the statutory time period allowed by the Civic Government (Scotland) Act 1982 for making objections or representations. He stated that it was competent under Paragraph 3(2) of the Act for the Licensing Authority to entertain a late objection or representation if they were satisfied that there is sufficient reason for it not being made within the time allowed. He then asked Inspector Davidson to outline the reasons for the late submission.

Inspector Davidson advised the Committee that an administrative backlog had occurred over the festive period as a result of the public holidays and that this had resulted in a delay with the response being lodged timeously.

The Committee agreed that they were satisfied with this explanation and that they would like to take account of the representation. Copies of the letter were distributed to the Committee and also to the applicant.

The Chairman ruled and the Committee agreed to take a couple of minutes to read the letter and thereafter invited the applicant to present his case.

Mr Wright appeared on behalf of the applicant stated that he was here to take

the case for a late hours catering licence forward in the hope of obtaining a fair hearing and positive outcome to the application.

He advised he intended to address the main areas for objection which had been lodged in response to the application. The first objection he referred to was that from the Environmental Health Manager (EHM) in relation to the potential for disturbance stating that he felt was based on conjecture and supposition by the EHM rather than reality and actuality and that there was no evidence to back this up. He then discussed the suggestion by the EHM that a three month trial period for hours from 11pm to 2am on Thursday, Friday and Saturday asking why this was being proposed when other Late Hours Catering Licences were granted until 2.30pm on Friday and Saturdays. He did not feel this was compliant with equal opportunity legislation. As a concession, he formally moved amendment of the hours applied for, requesting 11pm to 1.30am on Thursdays and 11pm to 2.30am on Friday and Saturdays.

He then moved on to discuss the objection by Ms Munro in relation to the impact on her existing business. He stated that this carried no weight as every business works in free enterprise. Although he did sympathise with Ms Munro he considered this had no bearing on whether a licence was obtained or not. He also discussed her concerns regarding adequate policing of an additional street stating that if there was additional policing required, the premises for which the licence was being requested was approximately 2 minutes from the Police Station and that he considered the Police to be able and competent to handle policing in the area. He then addressed the objection to a 3am licence stating that this had been amended earlier in his presentation.

Mr Wright then discussed the terms of the letter from Strathclyde Police questioning the term "high density" and its application. He suggested that Main Street was more dense with residents which would give more rise to the anti-social behaviour they were suggesting could occur and reminded the Committee he had responded to this in his comments relating to the EHM representation. He stated that the licence could actually help disperse crowds from Main Street as residents of Longrow may choose to use this premises rather than the unit in Main Street and that his client hoped to be in a position to boost local employment opportunities should the licence be granted. Mr Wright's last point was in relation to a statistical report by Inspector Harper which indicated that there were no calls relating to any specific premises and therefore concluded that a licence should be forthcoming on this basis.

The Chairman asked Inspector Davidson and Mr MacLeod (who was representing Ms Munro) whether they wished to question Mr Wright on his submission. They both stated they had no questions at this stage.

The Chairman then invited Inspector Davidson to speak to his representation. Inspector Davidson advised he was standing in for Inspector Harper and that in principle the Police had no objection but did wish to raise observations which were based on their records and own experience. The Police view was that there was potential for an increase in anti-social behaviour should the licence be granted. He stated that the reduced hours would be more acceptable in terms of policing and that the force had adequate resources to deal with this.

Mr Wright and Mr MacLeod both indicated that they did not wish to question the

Inspector on his submission.

Mr MacLeod then spoke on behalf of his client, Ms Munro. He referred to Ms Munro's letter of 26 December 2010 which raised an issue of overprovision. He stated that trade was not good within the area, his client having takings over the most recent weekend of £70 for Saturday night and £22 for Thursday. He advised that other premises had also indicated that they were suffering from the economic downturn with MacGeochan's being the most recent business to suffer due to lack of trade. He advised his client was not seeking the monopoly of business which was evidenced by the fact that she had not objected to the granting of a Late Hours Catering licence two years ago. With regards to comments by Mr Wright about equal opportunities, he directed the Committee to the last comment within his client's letter regarding a probationary period of trade that she had been required to undertake. He indicated that the reduced hours would go some way to addressing this concern but that this probationary period had lasted a number of years. He concluded by stating it was fair for the Committee to take into account comments regarding overprovision and that his client was perfectly content to accept a one rule for all result.

There was no questions on this submission by either Mr Wright or Inspector Davidson.

Question Time

Councillor McCuish asked for advice as to how 34 calls per year for Main Street related to other areas. Inspector Davidson advised that this was the centre of the town where the majority of disorder was related to congregation of the public. Other areas of the town were less of a concern.

Councillor Marshall asked about employment in the area, questioning what the current closing time of the premises was. Mr Wright advised that the premises currently closed at 10pm.

Councillor Marshall followed up by asking whether a 3am extension would allow for employment of a further 2 or 3 staff. Mr Wright advised that customers had already been asking for his client to open later and that was not only the Main Street catchment that they were trying to attract.

The Chairman reminded Members that the hours of opening had been formally amended to 11pm to 1.30am on Thursdays and 11pm to 2.30am on Friday and Saturday and that questions should be based on these revised hours.

Councillor Colville asked for confirmation of the probationary periods operated. Mr MacLeod suspected this was in relation to closing prior to 2.30am for a number of years to prove they could manage the situation but had no specific details.

Councillor Colville asked for confirmation of CCTV coverage and whether this would assist the Police. Inspector Davidson confirmed this was correct.

Councillor Dance queried the steps taken by the applicant to increase business or whether the intention was to take business from elsewhere. Mr Wright advised that patrons of the Crew had been requested later hours of trade and

that they did expect to take some of the business from other traders although the main reason for the application was in relation to tourism during the summer months.

Councillor Devon asked whether the type of catering being offered differed from that which was currently on offer. Mr Wright advised there were some areas of conflict such as fish and chips but that his client offered a larger range than that which could currently be obtained.

Councillor Mackay asked for comment regarding the structure of the Police letter, seeking clarification of whether there was any difference between an objection or observations. Inspector Davidson advised this was a standard format letter.

Councillor Reay asked whether the level of incidents had increased over the past year in view of the downturn. Inspector Davidson stated that his understanding was that the figures were steady across the area and there was no specific changes based on closing hours of licensed premises.

Councillor Reay asked if the proposals to offer a more varied range of food would have a measurable effect on Ms Munro. Mr Wright stated this would be difficult to respond to as he was unsure what the results would be.

Councillor Colville asked if the Crew still offered a home delivery service. Mr Islam advised that this service had now ceased. Councillor Colville asked whether this would be reinstated if extended hours were obtained. Mr Islam advised his other businesses offered this service but that it was not really required for fish and chips although they occasionally did deliver by request.

Councillor Dance asked whether her understanding was correct that there were two types of customer, those who would be taking home at 10pm and those who were out until 2.30am or whether they were trying to change eating habits of their current clientele. Mr Wright advised it was not about trying to change behaviour, it was responding to what was requested.

The Chairman asked for clarification of the number of extra customers they would be expecting if the licence was granted. Mr Islam could not confirm exact numbers but responded on the basis that there had been many requests for extended hours.

Councillor McCuish asked Inspector Davidson whether if granted the Police would expect to see a rise in people in the area and whether this would require a review of their policing arrangements. Inspector Davidson advised that generally people got their food and dispersed and that although it was preferable to have one hot spot to concentrate resources, the CCTV system outside the Crew would enable remote monitoring and direct policing could be applied if necessary.

Councillor McCuish asked for details about time to disperse groups. Inspector Davidson advised this generally took about an hour but was quicker if there was bad weather.

The Chairman asked, given the response to the previous question, whether it took longer to disperse the groups in the summer months. Inspector Davidson

confirmed this was the case.

Councillor Marshall queried the number of late hours catering facilities in the area. Inspector Davidson confirmed there were currently 3 premises with late licences.

Councillor MacAlister asked if he was correct in saying there were 34 incidents recorded last year. This was confirmed. He commented that this averaged 0.75 per week which he considered was low.

Summing Up

Inspector Davidson advised in principle he had no objection to the application although was concerned there was potential for increase in anti-social behaviour.

Mr MacLeod commented that it was strange that a premises which had demand for extended hours closed at 10pm and not 11pm as was permitted within the Act. He stated there was clearly an overprovision in a sparse market and encouraged use of a probationary period.

Mr Wright urged the Committee to grant the application reminding them of the points he had raised re equal opportunities, earlier dispersal of crowds in Main Street due to quicker turnover and residents of Longrow using the facilities, public demand and the willingness to reduce the requested hours of operating.

The Chairman asked each of the parties to confirm that they had received a fair hearing. Each party confirmed this to be the case.

Mr Reppke advised that there was one more procedural point which required to be addressed before the Committee moved on to debate the application. He required the applicant to sign a Certificate of Compliance confirming that the application for extended hours had been displayed appropriately. This was completed by the applicant and found to be in order.

Debate

Councillor Colville advised that the food van staff were fastidious in clearing rubbish although accepted there a lot of issues in Main Street requiring policing. He did not consider there were powers to refuse the application on grounds of overprovision and that in reducing the hours applied for he was happy to approve the application.

Councillor Currie felt that there was a compelling case put forward by Mr MacLeod for a probationary period and sought advice from officers on overprovision. Mr Forrester advised that there was case law which could be taken into account in terms of the provision to refuse an application for any other "good" reason. Mr Reppke advised that while this was straightforward for taxi applications where there was a survey addressing this matter, there was nothing similar to base this decision on and there would be a right of appeal by the applicant to the Sheriff Court, and so if Members were minded to take such an approach they should set out the basis for such a decision.

Councillor Mackay queried what weight could be given to the argument of

overprovision. Mr Reppke advised this was a decision for the Committee on the basis they were the decision makers although his opinion was that the Committee would need evidence if they were to go down this route and that although there was one objector, there were other traders who had not made any representation.

Councillor Mackay commented on taking account of the evidence of the downturn especially the closure of licensed premises. He stated that he did not consider that in opening for 3 and a half hours, three days per week it was a major plus in terms of local employment. He felt that in granting a licence it would just draw business away from other areas and did not feel in a position to support the application.

Councillor Devon asked for clarification of the time from which a late hours catering licence was required. Mr Forrester advised that this was required for opening after 11pm.

Councillor Marshall stated he couldn't support an application until 3am and that he was having difficulty with the 2.30am request given comments with the Police report particularly having regard to this being a residential area. He was basing this on his experience from Dunoon where premises licensed to 3am were causing difficulties. He asked when licensed premises in the area were required to close. The Chairman advised that the latest opening was 2am.

Councillor MacNaughton agreed with the earlier comments of Councillor MacKay in relation to employment. He did not consider that the proposals justified a 2.30am closure and indicated he would not be supporting the application.

Councillor MacAlister asked if there was a specific reference to overprovision in the Civic Government Act for licences other than taxis. Charles advised that there was case law that could lend itself to this interpretation.

Councillor Reay stated it was a difficult task to operate economic businesses but that in this instance, due to the density and location of the premises below domestic dwellings, he agreed with the police position that this would lead to an increase in anti-social behaviour and he was not in a position to support this.

Councillor Dance commented that she did not feel satisfied from the applicant that there is demand and that a probationary period of opening hours was pivotal. Mr Reppke stated that this should not be described as probation although it was a matter for Members if they wished to weight the option of a stepped approach – providing it was justified.

Councillor Dance stated she was not clear that the licence should be justified by demand and in her opinion there was an intent of direct challenge. She was also concerned about the potential to increase anti social behaviour.

The Chairman advised that in his experience this type of premises did attract attention and a certain level of disturbance. He commented that he was not happy to issue a licence until 2.30am and thereafter moved the following motion:-

Motion

That the licence be granted from 11pm to 1am Thursday, 11pm to 2am Friday and Saturday.

Moved by Councillor Kelly, seconded by Councillor McCuish

Amendment

That the licence be refused on the basis of the lack of demand and the likelihood of noise and disturbance in this part of Campbeltown.

Moved by Councillor Dance, seconded by Councillor Reay

Decision

On a show of hands there was an equality of votes with 6 in favour of both the motion and the amendment. The Chairman used his casting vote in favour of the motion which thereafter became the resolution of the Committee.

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