

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE  
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 22 FEBRUARY 2012**

**Present:** Councillor Daniel Kelly (Chair)

Councillor Gordon Chalmers	Councillor Donald MacMillan
Councillor Robin Currie	Councillor Roderick McCuish
Councillor Mary-Jean Devon	Councillor Alex McNaughton
Councillor David Kinniburgh	Councillor Al Reay
Councillor Alister MacAlister	

**Attending:** Charles Reppke, Head of Governance and Law  
Graeme Forrester, Solicitor  
Mr Islam, Applicant  
Mr Ferguson, Applicant's representative  
Inspector McLeish, Strathclyde Police  
Andrew Hill, Environmental Health Officer

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were intimated from Councillors Rory Colville, Neil Mackay, James McQueen and Bruce Marshall.

**2. DECLARATIONS OF INTEREST**

None declared.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR VARIATION OF LATE HOURS CATERING LICENCE (N ISLAM, CAMPBELTOWN)**

The Chair introduced himself and invited those present to do likewise and then outlined the procedure that would be followed.

Mr Reppke advised that one objection had been received from Argyll and Bute Council 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.

Mr Hill advised that he had contacted Licensing staff on 4 January 2012, the day before the 28 day deadline, to advise that providing no objections were received from the Police in respect of noise and anti social behaviour he would have no objections to this application. He advised that on 6 January 2012 he was advised that the Police had objected and, after taking advice from his line Manager, submitted an objection on behalf of Argyll and Bute Environmental Health Services.

The Committee agreed to take into consideration the late objection received from

Argyll and Bute Environmental Health Services and a copy of this was circulated to Members.

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

### **Applicant**

Mr Ferguson advised that he was in attendance to speak on behalf of his client Mr Islam who owned and traded at The Crew chip shop in Campbeltown which was a hot food take away facility. He advised that Mr Islam currently had a late hours catering licence in place for Fridays and Saturdays until 2.00 am and that he would like to extend his licence to trade until 2.30 am on Fridays and Saturdays which would relate to an additional 1 hour per week extension. He advised that his client has been trading since 2009 and bought this long established business in 2011. He advised that his client had previously submitted an application to extend his hours of business and that this had been turned down. He advised that at that time there had been 2 objections received from other traders and that on this occasion there had been no objections received from other traders, there were observations made by the Police and one late objection from Environment Health. He advised that there are other fast food establishments which currently enjoy a late hours catering licence until 2.30 am, the Indian restaurant 'Spice', which is currently closed, and Ms Munro's chip van. He stressed again that there has been no objections received from other traders. He advised that in Campbeltown on Fridays and Saturdays most town centre public houses closed at 2.00 am and patrons leaving these establishments were looking for a place to eat on the way home. He advised that his client regularly had customers arriving at The Crew just after 2.00 am and he has been unable to serve them and they have been turned away. Mr Ferguson advised that his client was always very careful about the operation of his license and made sure his doors were closed by 2.00 am. He advised that Friday and Saturday evenings were his client's busiest days of the week and that being able to open for an extra ½ hour on Fridays and Saturdays to serve food after the pubs closed would be the sensible thing to do. He advised that if pubs were only open till 1.00 am then his client would be looking to reduce his opening hours to 1.30 am. He advised that his client was clearly missing out on trade at the busiest time of the week and was unable to serve his customers. Mr Ferguson advised that there had never been any Police incidents associated with his client's premises and that the observation which had been made by the Police in respect of this application was general in nature and not specific to any problem or incident regarding his client's premises. He advised that he found the comment made that granting the application could incur anti social behaviour difficult to understand. He advised that it was his opinion if people were able to purchase hot food when the pubs closed they would go home earlier rather than hang around the streets. He also advised that there had been no objections received from nearby residents. He advised that his client's property was a single storey building and that there were no residents living above his shop. Mr Ferguson advised that he had a difficulty with the Environment Health Officer's objection as Mr Hill had not put forward any reason for his objection other than it was based on the observation made by the Police and that there would have been no objection if the Police had not made their observations. He also raised his concern that the Environment Health Officer had been advised of the Police observation as he believed objectors did not normally get to see other objections. He advised that there were no Environmental Health issues affecting

his client's premises and that no complaints have been received about rubbish lying about and that his client's staff always cleared up the area at closing time. He advised that he felt the objection from Environment Health was out of order and should be ignored and that the Committee should move to grant the application.

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

### **Questions from Police**

Inspector McLeish referred to Mr Ferguson's comment that if his client was able to serve hot food to people until 2.30 am this would mean they would go home earlier and asked for clarification on what was meant by this. Mr Ferguson advised that if people purchased hot food they would wish to go straight home to consume this rather than hang about the streets.

### **Questions from Objector**

Mr Hill advised that he had no questions.

The Chair invited the Police and Objector to speak in support of their submissions

### **Police**

Inspector McLeish confirmed that the information contained in the letter from Strathclyde Police was simply observations and did not relate to any specific incident. She advised that it was Strathclyde Police's belief that if the premises was open for longer people would congregate in this area for longer. She advised that if this premises was allowed to open for longer this would stretch Police resources. She advised that the area in which The Crew was situated was a residential as well as commercial area.

### **Objector**

Mr Hill advised that his reason for refusal was due to the risk of noise when the premises was clearing down at closing time. He advised that the noise from clearing of rubbish and the switching off of fans would go on till 3.00 am if the premises was allowed to trade until 2.30 am. He advised that he was also concerned about the added problem of people gathering at the premises. He advised that he took on board the comments made by the Police and that Argyll and Bute Council were talking about doing patrols with Police due to anti social behaviour concerns in Campbeltown.

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

### **Questions to Police and Objector**

Mr Ferguson advised that he had no questions but urged the Committee to ignore Mr Hill's comments and that no notice had been given to the Applicant in advance advising of Mr Hill's reasons for his objection and he also advised that it was not fair that disclosure of the Police observations had been made to Environmental Health.

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

### **Members' Questions**

Councillor Currie advised that he did not have an issue with the application and that the submission from Environmental Health was a very informal email and not worth the paper it was typed on. He asked why Environmental Health had an issue with noise if the closing down time was 2.30 am when they did not have an issue at 2.00 am. Mr Hill advised there was no issue with noise at present but that he would have an issue with noise beyond 2.30 am.

Councillor Currie asked why Mr Hill would have an issue with noise if the premises was open until 2.30 am. Mr Hill advised that this would be due to the premises being open for longer.

Councillor Devon asked the Police if the premises was open till 2.30 am would this lead to pubs being open longer. Inspector McLeish advised no and confirmed that there were other premises that opened until 2.30 am.

Councillor Chalmers asked if there were other premises open beyond 2.30 am. Mr Ferguson advised that there were 2 establishments with late hours catering licences until 2.30 am.

Councillor Chalmers referred to Police and Environmental Health comments about concerns in respect of anti social behaviour and asked why this would be a problem when there were already other establishments open till 2.30 am. Inspector McLeish advised that this observation was made based on experience. Mr Hill advised this was based on precaution and that there have been no noise complaints in respect the current premises open until 2.30 am.

Councillor Reay asked if these other premises were close to residential areas and Mr Ferguson replied yes.

Councillor Reay asked if there was a history of anti social behaviour at the other premises and Inspector McLeish advised no.

Councillor Reay asked if the Police had concerns about splitting of resources in case of potential trouble and Inspector McLeish advised yes.

Councillor Reay asked if there was any history of trouble at the other premises and Inspector McLeish advised not that she was aware of.

Councillor McCuish asked the Applicant to confirm if this was the same application which was previously refused for fear of anti social behaviour but without objectors and Mr Ferguson confirmed this was virtually the same application.

Councillor McCuish asked the Applicant that given there were already 2 other establishments open until 2.30 am, what evidence was there of demand for a 3<sup>rd</sup> premises to be open until this time. Mr Ferguson advised that there was demand as his client was having to turn customers away.

Councillor McCuish asked Mr Ferguson if his client was open every Friday and Saturday until 2.00 am and Mr Ferguson replied yes.

Mr Reppke referred to Mr Ferguson's comment regarding the late notice of the Environmental Health Officer's reasons for objection to the application and advised that if the Committee were minded to take account of the points raised by Environmental Health then he advised the Committee to continue consideration of this application to the next month to allow the Applicant the appropriate notice to consider the detailed terms of the objection now advised by Mr Hill.

Mr Ferguson advised that there was no point in the Committee continuing consideration of the application to the next month and that he was okay with the Committee taking on board Environment Health comments and that he would not wish to delay the process further.

The Chair invited the Police, Objector and Applicant to sum up.

## **Summing Up**

### **Police**

Inspector McLeish advised that the Police had general concerns regarding extending the opening hours of these premises as it could lead to people hanging about the streets longer and the possibility of violence and disorder in the area.

### **Objector**

Mr Hill advised that allowing the premises to open beyond 2.00 am would lead to a considerable risk of noise issues during clearing down, staff working and customer activity which would probably go on to 3.00 am

### **Applicant**

Mr Ferguson advised that his client ran a tight and tidy ship and that he has demonstrated a need to open for a further 30 minutes. He advised that the Police objection was just an observation and not an objection to these specific premises. He advised that the comments were hypothetical and had not been based on fact relating to his client's premises. He advised that he understood the issue of Police resources but that it was not fair if the only reason Mr Islam was not allowed to be open until 2.30 am was because his premises was on a different street from the other late opening premises.

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

## **Debate**

Councillor Kelly advised that he has received a large number of emails regarding the Campbelltown area and that he could see where the Police were coming from regarding problems in the streets and that another premises open until 2.30 am would not help this situation and that he would not be happy for another hot food

take away to get an extension to 2.30 am. From experience this would encourage people to hang about the town centre longer and we need to take account of residents in this part of the town centre.

Councillor Reay agreed with the points made and that Members had a duty to protect the wellbeing of residents in the area and to support the Police. He advised that he had no worries with Mr Islam personally but that he could not support the extension.

Councillor Chalmers advised that the Police have concerns about the potential for anti social behaviour and that this has been amplified by the objection from Environmental Health. There were no objections from the public and there was a basic question of fairness when other premises have a licence to open until 2.30 am.

Councillor Currie advised that he was convinced that the application should be granted and that the Council has a duty to support small businesses and that it was irrelevant that this application has been considered before. There were no objections from the Police only observations and nothing from Environmental Health. They were quite happy with the premises opening until 2.00 am and they should have no concerns about it being open until 2.30 am. He referred to the other 2 premises open until 2.30 am and advised that if this is good enough for them it should be good enough for Mr Islam. He referred to one of the premises having a license till 2.30 am being closed at the moment.

Councillor Devon advised that the Police comments were from wide experience and that there was nothing new apart from a lack of objectors since this application was last considered so would be recommending refusal.

### **Motion**

Whilst taking on onboard what Mr Ferguson says about the premises, I have more concern about what will happen in the high street after 2.30 am and move that this application should be refused.

Moved by Councillor Kelly, seconded by Councillor Devon

### **Amendment**

If it was reasonable to grant the extended licence for the other 2 premises then it should be reasonable to grant for a 3<sup>rd</sup> and that the application should be approved.

Moved by Councillor Chalmers, seconded by Councillor Currie

The Motion was carried by 7 votes to 3 and the Committee resolved accordingly.

### **Decision**

Agreed to refuse the Application for variation of late hours catering licence and that the Applicant will be notified of this decision within 7 days.

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