

MINUTE

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Licensing Committee

Council Chamber, Town Hall, Lerwick

Friday 15 November 2013 at 11.25am

Present:

A Cooper A Duncan
G Smith C Smith
A Westlake

Apologies:

M Bell P Campbell
G Robinson

In Attendance (Officers):

M Sandison, Director of Infrastructure Services
M Craigie, Executive Manager – Transport Planning
P Wishart, Solicitor
Chief Inspector MacInnes
L Gair, Committee Officer

Chair

Mr G Smith, Chair of the Committee, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

Mr Duncan declared an interest in Item 1, “J K Mainland Butcher Farmshop – Application for a Late Hours Catering Licence to be Determined” as he has a business contract with J K Mainland. Mr Duncan confirmed that he would leave the Chamber.

12/13 Minutes

The minutes of the Licensing Committee meetings held on 13 September 2013 and the Special meeting on 4 October 2013, having been circulated, were confirmed on the motion of Mr C Smith seconded by Mr Cooper.

(Mr Duncan left the Chamber)

13/13 J K Mainland Butchery Farmshop – Application for a Late Hours Catering Licence to be Determined

The Committee considered a report by the Executive Manager – Transport Planning (ES-09-13-F) that presented an application for a Late Hours Catering Licence.

The Director of Infrastructure Services introduced the report and advised that the application received was within policy for late hours catering. She informed the Committee that no objections were received from the Police in terms of the licensing objectives. The Director of Infrastructure Services explained that there was an objection from the Guest House above the shop however these issues could be addressed by placing conditions on the applicant as described in the appendix to the report.

The Director of Infrastructure Services added that when considering the application, under the Civic Government Licensing Scotland Act, there is a presumption to grant the application, however the Committee may wish to limit the operation by including a condition on the ventilation system and by placing other conditions as considered necessary.

C.I. MacInnes said that there were currently a number of late hours catering licences in Lerwick and a perception that this leads to increased noise and disorder. He advised however that there recently had been a 50% reduction in disorder and 46% reduction in violence. He said that if the community want businesses to operate with late licences, it is up to the Police to respond in a way to ensure that the community is kept safe.

Mr Obern, applicant for the premises of J K Mainland Butchery Farmshop, was invited to address the Committee. Mr Obern advised that he was applying for a late hours catering license in order to gain back the trade lost following a closure of an access to the street. He advised that the introductions of the bollards next to the Clydesdale Bank had lost him 50% of his trade. Mr Obern explained that the extended hours was an attempt to recoup the money he had lost. He said that if the sale of fast food proved to be a good financial runner he intended to purchase a catering trailer and would only use the shop for preparation. Mr Obern said that he had installed additional extractor fans and had not expected any objections and did not see that his proposal would cause any big problems.

In response to a question Mr Obern explained that he would be serving chicken portions, hot pies, burgers, rolls etc. He said that it would be the same selection that he served during the Flavour of Shetland event held at the Tall Ships which had been well managed with no queues as the food had been served quickly. Mr Obern added that the food would be sold from a serving hatch at the door and not from inside the shop, which would keep customers away from the glass units.

Mrs Manson, Objector, was invited to address the Committee. Mrs Manson said that the application for a late hours catering licence had been a bolt out of the blue and no notice had been given and she heard from a chance remark that Mr Obern was thinking to have a fast food outlet. She said that she had written her letter of objection in a short timescale. Mrs Manson said that a fast food outlet late at night would create a lot of noise. She said that as people would buy then stay in the area to talk to each other. She said that if she'd had more time she would have recorded the noise that is already created. Mrs Manson advised the Committee that she had operated a Guest House, directly above the butcher shop, for the past 11 years and this had been an established business for years before that. She never expected there to be a late hours fast food outlet there. Mrs Manson said that people would come out of the pubs and stay around the area, sitting outside the guest house and the noise will be phenomenal. She invited Members to stay in her accommodation and listen to the noise that is already experienced.

Mrs Manson said that if more notice had been given, she would have put in an objection on safety grounds as going back further to when the shop was renovated she was concerned about fire safety. She explained that she has to have a full fire safety system in place but noises from the shop can be heard and when she asked a friend who was an ex building control officer she was told not to worry as Building Control would insist on there being a triple layer of plaster board on the shop ceiling. Mrs Manson said that work was never carried out and the old ceiling is still visible. She said that the ceiling is very thin and she is always concerned about fire. She

said that she can hear conversations and she is no longer able to use the guest room on the lower floor because of the noise from the shop. Mrs Manson confirmed that she has objections on fire safety, noise and smells coming up. She has never previously reported on the smell from the shop so there will be no long record of objections which now appeared to be a mistake on her part.

During discussions, Ms Westlake said she was not comfortable with what she had heard from both parties and said she did not want to be in a position where a decision by the Committee could improve a situation for one party but create difficulty for an existing business.

The Chair noted that no other objections had been received, but Mrs Manson said that this was because those entitled to object were not aware of the proposals however she was aware that someone else had intended to object. The Director of Infrastructure Services advised that an anonymous email had been received. A response was sent stating that a name and address was required but no further contact from that objector had been received. This contact could therefore not be considered a relevant objection. Mrs Manson said that she had 48 hours notice and no one knew that this was going to happen.

The Director of Infrastructure explained the process that the applicant had to follow after lodging his application and explained that a notice had to be displayed on the premises 21 days from the lodging of the application. His application was received in June, and forms were completed indicating that the process had been followed.

Mrs Manson said that she had gone down to the shop and no notice was there. No one ever saw a notice and no further objections were made.

Mr Obern said that he completed the form provided and had attached it to the window on the corner of the shop. He said that people commented to him on the notice and asked when the fast food service was likely to start. He said that the notice was in the window for the full period required and he felt that the best place to display it was in the window but he could have just displayed it anywhere in the shop.

Mrs Manson said that 3am was an excessively late hour to expect anyone to put up with the disturbance. She said most places close at 10.30-11pm. She asked Members if they would stay in her accommodation if they knew they would have to listen to the noise until 3am. She stated that this was going to have a knock on effect on her business.

The Chair commented on the fire safety of the premises and whether there was a requirement to make changes with the proposed change of use. However the Committee were advised that as there was no physical alteration to the building it was not clear if a warrant would be required, but that would come clear following any decision taken by the Committee.

Ms Westlake reiterated her concerns that there was potential for this business to impact on the guest house business and asked Mr Obern if he intended to establish himself in a catering van, why did he not do that first. Mr Obern said that he had lost 50% of his trade and he was beginning with minimal outlay to see whether it was a viable option. He said that this was an easy way to see if it works before laying out more money for the van.

The Chair said that the Committee was clear in terms of what the Act requires and the grounds for refusal were clearly set out. He said that both parties objected to the bollards being put up and he empathised with both parties. He said that the licence could be granted with conditions and for a limited period. The Director of Infrastructure Services confirmed that the licence is normally approved for 3 years but it could be granted for a shorter period of time. She said that a condition could be added to ensure that the ceiling works are carried out before the applicant opens for business.

Mr C Smith moved that the Committee approve the grant of a late hours catering license for a period of 12 months, with no conditions.

Mr Cooper said that he was not comfortable with the motion and said that it was important to test if there is evidence of excessive disturbance. He said that he was concerned that the work on the ceiling had not been done and said that it should be carried out before the premises opens for late hours to deal with the noise and smells. Mr Cooper said that he would second Mr Smith if that work could be included in his motion. Mr Smith agreed to accept this as a condition of the approved application.

Ms Westlake suggested that the licence be approved for only 6 month to lessen the impact on two businesses and to revisit the issue regarding the bollards.

The Chair advised that the Committee does not have responsibility for the bollards but advised that he would make representation to the Chair of Environment and Transport Committee on the matter of the bollards and the impact it has had on businesses. He said however that there were time limits involved revisiting decisions but he reassured everyone that the last thing the Council wanted to do was harm any business. He reminded the Committee that the bollards were installed for safety reasons and that the decision was being looked at by the Chief Executive.

The Director of Infrastructure Services advised that the applicant had paid £300 for the licence to be processed and that would be the cost for the 3 year period. However if there were no issues following this period there would be no requirement on Mr Obern to pay for a further licence application until the current 3 year period had passed.

Decision

The Committee RESOLVED to approve the application for a late hours catering licence in respect of J K Mainland Butchery Farmshops for a period of 12 months with the condition that the ceiling fireproofing work is completed before the shop opens for late hours catering.

On the motion of Mr G Smith, seconded by Ms Westlake the Committee resolved in terms of subsection 4 of Section 50A of the Local Government (Scotland) Act 1973 to exclude the public from this meeting during consideration of the following agenda item on the grounds that it is likely that, if the public were present, there would be disclosure of exempt information as defined in paragraph 6 of Part I of Schedule 7A to the said Act.

(No members of the Public were present).

(Mr Cooper and Mr C Smith left the meeting).

Applications for Grant of Taxi Drivers Licences

The Committee considered a report by the Executive Manager – Transport Planning (TP-09-13-F) that sought a decision to be made on two applications for taxi drivers licences.

The Committee decided to admit, for consideration, observations from the Police concerning previous convictions of the applicants. Copies of the Police observations were then circulated to Members.

Decision:

The Committee **RESOLVED** to:

1. approved the grant of a taxi drivers licence for a period of 3 years, and
2. approve the grant of a taxi drivers licence for a period of 1 year.

The meeting concluded at 12.30pm.

CHAIR