

LICENSING SUB-COMMITTEE HEARINGS

1 SEPTEMBER 2008

Present :- Councillor Barrie Cook (Chairman)
Councillors Michael Lilley and Ann Quarrie

1. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Applications under the Licensing Act 2003

The Head of Environmental and Protective Services submitted reports in relation to the following applications for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

4. Frankie and Benny's, Off London Road, Stanway, Colchester, Essex

The Sub-Committee considered an application in respect of Frankie and Benny's at land off London Road, Stanway for a premises licence.

In Attendance

Applicants: Heath Thomas, Solicitor, and Bhupvinder Chaggar, Designated Premises Supervisor

Officers: Mr R Essex, Legal Services and Mr Harvey, Licensing Manager

The Application

Sarah White, Committee Services Officer (Licensing), briefly introduced the application explaining that an objection had been received from a local resident who was concerned at the increased noise and disturbance that he believed would result from late night drinking at the premises. The objector considered that opening to 23.00 would satisfy the majority of diners whilst not encouraging late night drinking. There was no objection to the non standard times sought in the application.

In presenting the application Mr Thomas explained that it was a modest one under the terms of the 2003 Act seeking only the provision of alcohol and late night refreshment until midnight. Music would be limited to background music only and this would be at a level that enabled people to talk. The restaurant would provide seating for

approximately 130 people, operate waiter/waitress service and would have a very small bar area. Representations had not been received from any of the responsible authorities and the only objector was not immediately adjacent to the premises as there was a large medical centre between the two properties. It was not anticipated that the grant of the licence would result in any problems given the mixed clientele that was expected, its location and management practices. Mr Thomas informed the Sub-Committee that in his 10 years experience of the company there had been no applications for reviews of any of the premises licences that it held.

Mr Harvey, Licensing Manager, confirmed that the application was a modest one under the terms of the act and was in line with the Council's Licensing Policy.

The Decision

RESOLVED that the Sub-Committee gave careful consideration to the relevant parts of the Section 182 Guidance, the Council's Licensing Policy, the contents of the report, the representation received from a local resident, the absence of representations by the responsible authorities, the submissions made at the hearing by the applicant's representative and by the objectors and determined to grant the application to permit-

- The supply of alcohol on and off the premises for the following hours-

10.00 to 00.00 Mondays to Sundays inclusive

Save 10.00 on New Year's Eve until 00.00 on New Year's Day

- Provision of late night refreshment indoors for the following hours-

23.00 to 00.00 Mondays to Sundays inclusive

Save 23.00 on New Year's Eve to 05.00 on New Year's Day

- The premises to be open to the public for the following hours-

10.00 to 00.30 Mondays to Sundays inclusive

Save 10.00 on New Year's Eve to 00.30 on 2 January

Subject to the following conditions:-

Conditions consistent with the operating schedule

- There is to be waiter/waitress service throughout the restaurant area of the premises affording control and supervision.
- Substantial food to be available throughout licensed hours.
- The premises to meet current building regulation requirements.
- A fire risk assessment to be conducted and its recommendations implemented.

- Children to be permitted access to the premises in accordance with the provisions of the Licensing Act 2003.
- A proof of age scheme to be operated at the premises and photographic identification only will be accepted at the premises as valid proof of age.

Mandatory conditions

- Mandatory conditions where licence authorises supply of alcohol
 - 1) no sale of alcohol may be made under the premises licence-
 - a) at a time when there is no designated premises supervisor in the respect of the premises licence, or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
 - 2) every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Councillor Quarrie left the meeting at this point. Councillor Sykes joined the meeting at this point.

5. Ranges Service Station, 154 Mersea Road, Colchester, Essex

The Sub-Committee considered an application in respect of Ranges Service Station, 154 Mersea Road, Colchester for a premises licence.

In Attendance

Applicants: Mr Botkai, Solicitor, and Mr Wright, Senior Licensing Co-ordinator, BP
 Residents: Ms Kaylan, Ms Spurr and Mr Bridge
 Officers: Mr R Essex, Legal Services and Mr Harvey, Licensing Manager
 Ward Councillors: Councillors Harris and Naish

Councillors Harris and Naish had been unable to lodge objections to the application in accordance with the provisions of the Licensing Act 2003 and therefore made a silent protest at the meeting by holding up placards in the public seating area of the committee room opposing the application. The Chairman addressed the protestors and stated that whilst he respected their right to protest they must remain silent and were to take no part in the proceedings.

The Application

Sarah White, Committee Service Officer (Licensing) briefly introduce the application advising that representations had been received from a number of local residents in

respect of this application. There had been four representations and a petition received from residents in the immediate vicinity of the premises concerning the likely effect of granting the application on the prevention of public nuisance. Residents referred to existing problems with noise nuisance which emanated from the garage and which was tolerated currently because it finished at 22.00. Residents expressed concern that by granting the licence other people making their way home from the town late at night would be encouraged to congregate at the premises thereby leading to an increase in noise nuisance in the area and disturbance to local residents. Concern was also expressed at the potential increase in nuisance caused by the forecourt lights being left on for longer.

Mr Botkai, in presenting the application explained that whilst the application showed 24hour opening, there was no intention at this point to extend opening hours beyond those currently operated which were 06.00 to 22.00. The hours sought were to bring the premises into line with all the other BP petrol stations and to simplify operating procedures for staff that moved around the various BP stations similarly the 24hour opening was a policy decision made by BP when the licensing act came into operation. In addressing the concerns raised by the residents, Mr Botkai explained that there would be a limited range of wines and beers on sale and spirits would be kept behind the counter. Bp would not sell alcohol pops or split packs of beer. The sale of alcohol was intended to complete the range of convenience products offered at the shop and it was not anticipated that its sale would lead to a rise in crime and disorder.

Ms Spurr, Ms Kalyan and Mr Bridge addressed the Sub-Committee outlining their concerns in respect of the application. They mentioned the potential noise nuisance and antisocial behaviour which they feared would result from the grant of any licence and explained to the Sub-Committee the problems they were currently experiencing with anti-social behaviour, littering, noise and general disturbance. It was accepted that some disturbance was inevitable from a petrol station but this was tolerable on the basis that it ended at 22.00. There was concern that if the licence was granted the garage would become a focus for people making their way home from town late at night and early into the morning therefore leading to increased disturbance to local residents. In response to the residents' concerns Mr Botkai stated that the applicants were willing to offer a condition that no hot food be sold at the premises. Representations had not been received from any of the responsible authorities in respect of the application.

The Sub-Committee retired to consider the application and having reached its decision the Chairman reconvened the meeting and read out the decision. Mr Botkai questioned the imposition of the following condition –

- for reasons of public safety, staff levels must be disclosed and agreed with the licensing authority prior to the commencement of trading in alcohol and hot beverages.

Mr Botkai did not consider the condition to be lawful, reasonable or proportionate. The Police had not opposed the application and therefore there were no reasonable grounds on which to base the condition. If there were problems subsequent to the licence being granted then it could be called into review. Mr Botkai indicated that the applicants were likely to appeal the imposition of the condition and invited the Sub-Committee to reconsider its imposition. Mr Harvey, Licensing Manager, expressed his

concerns about the condition and stated that in his opinion as well, he would not be able to enforce such a condition if it were imposed.

The Sub-Committee adjourned to give further consideration to the points raised by Mr Botkai and Mr Harvey and upon reconvening the Chairman informed the meeting that the Sub-Committee had determined to accept the wording offered by the applicant in the operating schedule with respect to this condition, namely that –

- the applicant will at all times maintain adequate levels of staff. Such staff levels will be disclosed on request, to the licensing authority and police.

The Decision

RESOLVED that the Sub-Committee gave careful consideration to the relevant parts of the Section 182 Guidance, the Council's Licensing Policy, the contents of the report, the representations received from local residents and the absence of representations by the responsible authorities, the submissions made at the hearing by the applicant's representative and by the residents and determined to grant the application to permit-

- The supply of alcohol off the premises for the following hours-

08.00 to 23.00 Mondays to Sundays inclusive

- Provision of late night refreshment indoors and outdoors for the following hours-

23.00 to 05.00 Mondays to Sundays inclusive

- The premises to be open to the public for the following hours-

00.00 to 00.00 Mondays to Sundays inclusive

Subject to the following conditions:-

Imposed by the Sub-Committee at the Hearing

- That alcohol must be sold within the store premises and must not be sold through the hatch.
- To keep noise and disturbance to local residents to a minimum all sales of hot beverages must be made within the store.
- For reasons of the prevention of public nuisance suitable waste receptacles for use by customers be provided and emptied on a daily basis.

Offered by the applicant at the Hearing

That there be no provision of hot food between the hours of 23.00 and 05.00.

Conditions consistent with the operating schedule

- Late night refreshment may be provided at the premises for consumption on or off the

premises.

- Late night refreshment will be in the form of hot drinks.
- A CCTV system to be installed, or the existing system maintained, such system to be fit for the purpose.
- The CCTV system shall be capable of producing immediate copies of recordings on site. Copies of recordings will either be recorded on good quality video tape or digitally on to CD/DVD or other equivalent medium.
- Any recording shall be retained and stored in a suitable secure manner for a minimum of 28 days and shall be made available, subject to compliance with data protection legislation, to the police for inspection on request.
- The CCTV system will incorporate a camera covering the entrance door and the alcohol display areas and will be capable of providing an image which is regarded as identification standard. The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
- The system will display, on any recording, the correct time and date of the recording.
- A system will be in place to maintain the quality of the recorded image and a complete audit trail maintained.
- The CCTV system will be maintained so as to be fully operational throughout the hours that the premises are open for any licensable activity.
- The applicant will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the licensing authority and police.
- Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.
- Challenge 21 (or equivalent) scheme shall be adopted so that all cashiers are trained to ask any customer attempting to purchase alcohol, who appear to be under 21 years of age. This evidence shall be photographic, such as a passport or photographic driving licence until other effective identification technology (for example thumb print or pupil identification) is introduced.
- All cashiers will be instructed through training, that the sale shall not be made unless this evidence is produced. Prominent notices will be displayed in the store advising customers that they may be asked to provide evidence of their age.

Mandatory conditions

- Mandatory conditions where licence authorises supply of alcohol

1. no sale of alcohol may be made under the premises licence-

- c) at a time when there is no designated premises supervisor in the respect of the premises licence, or
- d) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

2. every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

6. Close of Meeting

The meeting closed at 12.00.