



## REGULATORY SUB COMMITTEE

2.15pm to 6.05pm

17 December 2012

Present: Councillors Kendrick (chair), Thomas, Stammers and Wright (to end of item 4)

Apologies: Councillor Sands (M)

**1. HIGHWAYS ACT 1980: APPLICATION FOR THE RENEWAL OF A LICENCE TO PLACE TABLES AND CHAIRS ON THE HIGHWAY – THE GARDNERS ARMS PUBLIC HOUSE, 2-4 TIMBERHILL, NORWICH**

**RESOLVED** as this was likely to be a substantive item to defer consideration until items 3\* and 4\*, below, applications for the grant of private hire drivers' licences have been considered.

**2. EXCLUSION OF PUBLIC**

**RESOLVED** to exclude the public from the meeting during consideration of item \*3 and \*4 below on the grounds contained in paragraphs 1 and 3 of Part 1 of Schedule 12(A) of the Local Government Act 1972.

**\*3. APPLICATION FOR GRANT OF A 3 MONTH PRIVATE HIRE DRIVERS' LICENCE: CASE NUMBER 12/000910/PHD3 (PARAGRAPHS 1 AND 3)**

**RESOLVED**, in the absence of the applicant, to defer consideration in respect of this application to a future meeting.

**\*4. APPLICATION FOR GRANT OF A 3 MONTH PRIVATE HIRE DRIVERS' LICENCE: CASE NUMBER 12/02165/PHD3 (PARAGRAPHS 1 AND 3)**

(The applicant attended the meeting for this item. He confirmed that he had been informed of his right to be legally represented at the meeting but had chosen not to be. He produced his DVLA licence for inspection by the committee).

In reply to a question, the applicant said that he had not received any further convictions or formal cautions and was not aware of any pending prosecutions since his application.

The licensing manager presented the report.

The applicant explained the circumstances of his convictions for exceeding the statutory speed limit on a public road on 27 September 2010 and 31 December 2010. The applicant said that he had been working as a private hire driver for another authority since the autumn of 2010 and that this was the first time he had applied to the city council for private hire driver's licence.

(The applicant and the licensing manager left the meeting at this point).

Following discussion it was:-

**RESOLVED**, unanimously, to grant a 3 month private hire driver's licence in respect of this application.

(The applicant and the licensing manager were admitted to the meeting and informed of the decision minuted above. The applicant then left the meeting.)

(Councillor Wright left the meeting at this point. The sub-committee held a short adjournment. Members of the public were then admitted to the meeting.)

**5. HIGHWAYS ACT 1980: APPLICATION FOR THE RENEWAL OF A LICENCE TO PLACE TABLES AND CHAIRS ON THE HIGHWAY – THE GARDNERS ARMS PUBLIC HOUSE, 2-4 TIMBERHILL, NORWICH**

(The applicant, his colleague and their legal advisor, together with interested parties attended the meeting for this item.)

The licensing manager referred to the report and apologised to the committee and interested parties that due to an error during the publication the full wording of paragraph 12, relating to the objections to the application had been omitted.

(The wording for this paragraph was circulated at the meeting and is reproduced below:

12. The principal grounds of objections from Moss and Leakey are: nuisance and adverse impact on the amenity, character and vitality of the surrounds; continuing (and historic) breach of licence conditions; and obstruction to movement and unsuitability of site space (including the application area and surrounds) and function. In his objection, Mr Hardbattle voices concern regarding noise and general disturbance from the customers of the Gardeners Arms which can be heard in the consulting room on the first floor of Moss and Leakey Opticians at the rear of the premises and also in the waiting area at the front of the building on the first floor. )

Members were also advised that further representations had been received after the publication of the report and had been circulated in advance of the committee. The licensing manager presented the report and commented on a complaint received from the objector relating to the report and explained that as a consequence of the delay between the grant of the licence on 21 November 2011 and the issue of the licence on 1 February 2012, the applicants and their legal advisor were not aware of the additional conditions. He pointed out that the applicants and their legal advisor had been informed of the conditions at the committee meeting on 21 November 2011.

The objector said that he had written to the council with his concerns about the applicants' compliance with the table and chairs licence conditions on 31 January 2012 because the tables and chairs had not been placed on the highway as set out in the conditions of the licence. He was concerned that people congregated in the open spaces and caused noise and disruption to his business.

The applicants' legal advisor commented on the background to the application and explained that when the licence was renewed in November 2011 there had been a misunderstanding about the new condition which required all the permitted tables and chairs to be placed in the area and this had been addressed when pointed out to his client. He referred to the report and the further representations from the applicants, the bar manager and a neighbouring business which had been circulated following the publication of the agenda papers.

The applicants' legal advisor, together with the applicants, answered questions from the objector and members. The legal advisor admitted that there had been a breach of the condition relating to ensuring that all 8 tables and 24 chairs were used and reiterated the reasons for this. He explained that the licence had been increased to include the winter months when the government's smoking ban had been implemented. The licensing manager explained that the spaces either side of the main entrance were not included in the licensed area. The applicants explained that this was for health and safety reasons.

In response to a question from the objector, the council's environmental protection officer referred to the monitoring report of the premises which had been included in the papers and confirmed that there was no reason to take enforcement action following the issue of the licence on 1 February 2012. In answer to a point made by the applicant, the environmental protection officer explained what was meant by the "reciprocal of the square" in relation to noise travel and explained that noise did not emanate from a single source in a straight line and with people moving up and down the street the source of their voices did not remain static. The objector played a period of video to committee, with sound. The council's environmental protection officer explained that the video of people using the tables and chairs presented at the meeting by the objector would not have been acceptable at court if he had been giving evidence because it would need to be calibrated and would need to show the actual level of sound that had occurred. The objector said that he would welcome the environmental protection officer recording the noise from his premises so that it could be used as evidence to support his objections at a future sub-committee. The applicant asked the objector to ring him if patrons of the public house were causing problems at his shop so that it could be dealt with.

The objector then presented his objections as set out in the written statement and called on the three colleagues who had attended with him to support the evidence. He considered that the renewal of the licence in November had removed conditions which were useful and this decision was detrimental and had increased the level of noise nuisance that was experienced at his premises. In conclusion the objector referred to ten conditions, set out in his statement which he considered would mitigate against the noise and nuisance experienced at his premises.

(There was a short adjournment and the meeting reconvened.)

The objector then answered questions from members and the applicants. He said that he did not approach the applicants with complaints because he feared that he would be abused. He had produced evidence from his CCTV camera to support these complaints and no action had been taken by the police, council or the applicants. A member suggested that the tables and chairs licence conditions should be reasonable and enforceable. The objector then confirmed to the applicants' legal advisor that he had called the police on only two occasions, 4 July 2012 and 25 August 2012. The police licensing officer confirmed that there had been no evidence to support the allegations or require any further action from the police.

The applicant's colleague then gave the closing statement in support of the application and stressed that the use of tables and chairs on the highway were important for the financial viability of the public house; added to the amenity and attractiveness of the street to tourists and neighbouring businesses; and provided facilities for smokers and drinkers. The business was a busy and well run public house.

The objector then gave his closing statement outlining his objections relating to noise nuisance and that the licence was an extension of the public house for commercial gain and that more people could stand in the area than be seated and made more noise; that the applicants had no respect for his business and that conditions had been breached.

The legal advisor for the applicant said that no evidence of noise nuisance had been reported by the environmental protection officer or any other evidence of the licence being breached, apart from the initial misunderstanding relating to the condition that all the tables and chairs should be placed on the highway. The conditions that the objector recommended in his statement were not justified.

The objector asked if he could contest the grant of the licence for a period of three years.

Discussion ensued in which members considered the written statements and the evidence that had been presented at the meeting. Members noted that there was a perception of noise from the objector and that in summer, open windows would exacerbate this. The removal of the tables and chairs would not prevent people gathering outside the licensed premises or on the street. The evidence of the environmental protection officer did not support a breach of the licence apart from the period November 2011 to the issue of the licence on 1 February 2012.

**RESOLVED:**

- (1) unanimously, to renew the application for a licence to place tables and chairs on the highway in respect of The Gardeners Arms Public House, 2-4 Timberhill, Norwich, with no further changes to the conditions as set out in the licence issued on 1 February 2012;
- (2) with 2 members voting in favour (Councillors Kendrick and Stammers) and 1 member voting against (Councillor Thomas) grant the licence to place tables and chairs on the highway in respect of The Gardeners

Arms Public House, 2-4 Timberhill, Norwich, for a period of 3 years.

CHAIR