

Mr T Wells
Solicitor
Wells Connor & Co
145-147 Town Street
HORSFORTH
LEEDS LS18 5BL

Chief Executive's Department
Governance Services
4th Floor West
Civic Hall
Leeds LS1 1UR

Contact: Helen Gray
Tel: 0113 247 4355
Fax: 0113 395 1599
Email: helen.gray@leeds.gov.uk
Your reference:
Our reference:A61/hg/Headingley Sand

15 June May 2007

APPLICATION FOR THE GRANT OF A PREMISES LICENCE – “HEADINGLEY SANDWICHES”, 54A NORTH LANE, HEADINGLEY, LEEDS LS6 3HU

On 14TH May 2007 the Licensing Sub Committee heard an application made by Mr Mohammed Bashir for the grant of a premises licence in respect of the premises known as Headingley Sandwiches, 54A North Lane, Headingley.

The applicant sought the following:

Provision of Late Night Refreshment:

Sunday to Saturday 11:00 hours until 00:00 hours midnight

Hours the premises are to be open to the public:

Sunday to Saturday 11:00 hours until 00:00 hours midnight

This letter represents the formal decision of the Sub Committee in respect of the application.

Preliminary Procedural Issues

The Sub Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made.

The Sub Committee noted determination of the application had been adjourned from a previous hearing in January 2007 to allow time for planning matters to be addressed.

The Sub Committee then decided that the procedure for the hearing would not be varied. The Sub Committee also considered if the public should be excluded from any parts of the hearing. The Sub Committee decided to exclude the public from that part of the hearing where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

FINAL

Prior to the hearing the Sub Committee had considered the Licensing Officers Report which included a copy of the application and internal layout plan along with written representations received from local residents Mr P Marchant, Ms R Harkess, Mrs A Beaumont, Mr B Unsworth, and Ms C Dowgill. The members of the public did not attend the hearing and the Sub Committee resolved to take their written submissions into account and proceed with the hearing.

The Sub Committee then went on to consider the application.

The Hearing

The following parties attended the hearing:

Mr T Wells, solicitor for the applicant

Mr M Bashir, the applicant

Mr A Hussain (observer)

Sgt A Pickersgill – West Yorkshire Police (WYP)

Mr C Sanderson – LCC Department of Development

Mrs J Walker, LCC Department of Development

Ms B Massey – Entertainment Licensing

In determining the application the Sub Committee took into account the written submissions contained within the report. These had been circulated to the parties prior to the hearing.

After considering the evidence and submissions the Sub Committee needed to satisfy itself that granting the application to vary Licence would promote the licensing objectives.

In reaching this decision the Sub Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the Council's own Licensing Policy.

In particular the Sub Committee took into account Sections 17 and 18 of the Act because these were the most relevant to the application and Chapter 7 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety.

The Sub Committee then went on to consider the following paragraphs of the Licensing Policy as the Sub Committee took the view these paragraphs had bearing on the application.

11:05 to 11:10 Crime & Disorder

11:11 to 11:22 Public Safety

11:23 to 11:28 Public Nuisance

The Sub Committee also had regard to the fact that the premises lay within the Headingley Cumulative Impact Policy Area though were not of the type covered by the policy.

The Sub Committee noted that the representatives of LCC Department of Development were in attendance to provide clarification on any planning matters arising but had not submitted a representation and as such were not a party to the hearing. Additionally Sgt Pickersgill attended to confirm agreements already reached between the applicant and WYP

The Sub Committee noted the applicant had agreed to the following measures suggested by Leeds City Council Environmental Health Services in order to prevent public nuisance:

Noise and Vibration

- 1) Noise shall be inaudible at the nearest noise sensitive premises after 23:00 hours. In order to meet this condition:

FINAL

- a) the rear door shall be kept closed, except for emergencies, after 23:00 hours
 - b) the staff shall take any breaks at the front of the premises
 - c) all deliveries shall be made from the front of the premises
- 2) Ensure that no nuisance is caused by noise or vibration emanating from the premises
 - 3) Ensure that noise from plant and machinery is inaudible at the nearest residential premises during the operating of the plant. Plant and machinery shall be regularly serviced and maintained to continue to meet this requirement

These agreed measures would appear as conditions of the premises licence should the application be granted

Additionally, the Sub Committee noted the applicant had originally requested 03:00 terminal hour, however following discussions with WYP in January 2007 had amended the request to 00:00 hours midnight every day as stated in the application. This was confirmed by Sgt Pickersgill

The Sub Committee permitted Mr C Sanderson, Department of Development to comment in order to clarify planning matters. Mr Sanderson confirmed this premises currently benefited from an A1 class retail planning use which would facilitate the sale of cold food. Mr Sanderson stated that the business conducted at this premises was totally different from the permitted planning use, as this premises was directly linked to the premises next door – No 56 North Lane (Lister Fisheries which was also owned by Mr Bashir). Mr Sanderson explained that patrons could enter No 54A North Lane, and request hot food, which would then be prepared and served from No 56 North Lane. All parties present were aware of a hearing with regard to Lister Fisheries held just prior to this hearing.

Mr Sanderson informed the Sub Committee that an Enforcement Notice regarding the unauthorised use of the premises at No 54A North Lane had been served on the applicant the previous week. This premise had been the subject of a planning application for change of use to allow its' use as a hot food take away in 2004, but this had been refused and no appeal had been received. Mr Sanderson reiterated that although this premises was called "Headingley Sandwiches", in fact hot food prepared next door could be obtained from this premises.

In answer to a question from the Sub Committee, Mr Sanderson confirmed the premises did legitimately sell cold food under the auspices of the existing A1 planning use. The sale of hot food would require A5 planning permission. The Sub Committee queried why patrons wanting hot food simply did not go the adjacent premises to which he responded the Department did have evidence that Mr Bashir closed No 56 (Lister Fisheries) at the end of the current permitted hours, but that he continued to sell hot food through Headingley Sandwiches.

The Sub Committee then moved onto hear the submission of Mr Wells, solicitor for the applicant. Mr Wells was permitted first to seek confirmation from Mr Sanderson that no formal objection to the application had been submitted by the Department of Development. Having received confirmation, Mr Wells' commented on the relevance of the representation made at the hearing by Mr Sanderson if that submission was not deemed sufficient to lodge a formal objection.

Moving on, Mr Wells explained that the application for the grant of a Premise Licence was submitted in November 2006 and was first considered by a Licensing Sub Committee on 8 January 2007. At that time, Mr Bashir amended his application in order to reduce the terminal

FINAL

hours to 00:00 hours midnight every night in agreement with WYP. No objection from the Department of Development was received at that time. Following that hearing, the architect wrote to the Department of Development setting out the current use of the premises in order to clarify planning issues. The Sub Committee permitted Mr Wells to table a copy of the letter. Mr Wells confirmed that the sale of microwave pizza was not classed as a hot food in planning terms, as cold food was heated in a microwave, this complied with the current A1 planning use. Mr Wells stated he was unaware an Enforcement Notice had been served on his client, but felt that Mr Bashir would contest the accusation that he was operating this premises beyond its existing permissions. Mr Wells and Mr Bashir then displayed the A1 menu boards from Headingley Sandwiches to provide the Sub Committee with an idea of the food available from the premises.

Mr Wells reiterated the business at No. 54A primarily operated to provide cold food such as sandwiches, and the heating up of other foods such as pizza, baked potatoes was ancillary to that business. He explained that No. 54A could operate 24 hours per day seven days a week unlike the business at No 56 (Lister Fisheries) which provided hot food.

In answers to questions from the Sub Committee Mr Wells explained the kitchens of No. 54A contained 2 microwave ovens and one electric oven which was used to heat the baked potatoes, plus a griddle to heat panninis. He confirmed that there were extensive kitchens to Lister Fisheries, but that was a separate premise. He agreed that the kitchens were connected but not for use by each other although clearly access could be gained between them.

The Sub Committee were concerned that although it was stated that Mr Bashir regarded the two businesses as totally separate in that they had different operating hours, different preparation methods, with different food on sale and that he did not utilise the kitchen equipment for both premises, the presence of the connecting door negated this.

Mr Wells explained the doorway had always been there and was in situ when Mr Bashir purchased the premises. The Sub Committee heard that Mr Bashir would deny the suggestions contained within the Enforcement Notice that he cooked hot food in Lister Fisheries for sale from Headingley Sandwiches. The door allowed staff to work in both premises. Mr Wells confirmed that if a patron entered Headingley Sandwiches and wished to buy fish and chips (as sold from Lister Fisheries) they would not be served from Headingley Sandwiches. Mr Wells reminded the Sub Committee that an application to grant a premise licence for Lister Fisheries to open until 00:30 on Fridays and Saturday had been granted by the same Sub Committee at an earlier hearing and suggested it would be unlikely for patrons to try to buy hot food from Headingley Sandwiches as this premises would close earlier.

In conclusion and in response to a query from the Sub Committee Mr Wells confirmed the notice advertising the application had been displayed correctly. Furthermore, the Sub Committee which had first considered this application in January 2007 had made no comment on this issue

The Sub Committee then adjourned to make their deliberations in private. It should be noted that all parties were invited back as the hearing was reconvened to allow the Sub Committee to seek clarification of the layout of the premises, in particular the preparation area to the rear of the building. Mr Wells confirmed there was a doorway between No. 54A and No 56 North Lane, but there was no door which could be closed and locked. He stated the preparation areas were wholly separate. Furthermore No. 56 North Lane was set at a different level, being two steps higher than No. 54A, thus indicating it was indeed a separate premises and not one continuous building. The Sub Committee heard there were two separate preparation areas and he could not explain why the architect had drawn the plans as presented with the

FINAL

application which seemed to show the food preparation areas as being the same area for both businesses.

Mr Sanderson was allowed to clarify further. He stated he had first visited the premise 2 and half years ago, and there had been no doorway at that time. Since then, an aperture had been created in the wall which provided an opening between No.54A and No.56. Mr Sanderson also stated there was a continuous serving counter within the full length of the premises at No.54A and No.56.

The Legal Adviser supplied copies of the ground floor plans of both No 54A and No 56 to Mr Wells for comparison, as the Sub Committee had noted that the plans appeared to fit together and present one kitchen/preparation area. Mr Wells reiterated the two premises were entirely separate

On receipt of that information the sub Committee adjourned once more to make their deliberations in private

The Decision

The Sub Committee had regard to the information supplied by LCC Department of Planning and the written submissions made by the local residents. Members also carefully considered the verbal representations made by the applicant's solicitor in support of the application and referred to the plan of the premises contained within the Licensing File and submitted with the application.

The Sub Committee noted the applicant had amended the application following discussions with WYP to reduce the terminal hour to 00:00 hours midnight every night and welcomed this move. The Sub Committee also noted the measures already agreed by the applicant with LCC EHS and were reasonably satisfied that these measures would address any perceived concerns local residents may have with regards to noise and disturbance from this premises. However the Sub Committee were concerned that this premises was not distinct from the licensed premises at No. 56 North Lane (Lister Fisheries), particularly in view of the different operating hours and different types of refreshment on offer. The Sub Committee considered there was further action which could be taken which was reasonable in the circumstances in order to address this

The Sub Committee having considered the application and submissions very carefully, resolved to grant the application as applied for, but this shall be conditional on there being permanent separation of the premises at No.54A North Lane from the premises next door at No.56 North Lane, whether this be through the provision of a solid wall or a locked door depending on the position of the landlord of the building. To clarify:

Licensable Activities

Provision of Late Night Refreshment:

Sunday to Saturday 11:00 hours until 00:00 hours midnight

Hours the premises are to be open to the public:

Sunday to Saturday 11:00 hours until 00:00 hours midnight

Conditions

- Those measures suggested by LCC EHS and agreed by the applicant will now be included within the Premises Licence as conditions

FINAL

- The licence shall only come into effect once the works to physically separate No 54A North Lane and No 56 North Lane are complete

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:

Clerk to the Justices

Leeds Magistrates Court

Westgate

Leeds

LS1 3JP and accompanied by a copy of this decision letter and the court fee of £75.00.

Yours faithfully,

Helen Gray

Clerk to the Licensing Sub Committee