



Democratic Services

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3rd February 2009

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: "PITA" 10A OTLEY ROAD, HEADINGLEY, LEEDS, LS6 2AD

On the 12th January 2009 the Licensing Sub-Committee heard an application brought by Austin, Fogarty & Lee Ltd for the variation of a premises licence in respect of the premises known as "Pita" 10A Otley Road, Leeds, LS6 2AD.

The applicant sought the following:

Proposed Licensable Activities

L Late Night Refreshment

Proposed Hours of Licensable Activities

Sunday to Thursday	23:00 hours to 00:30 hours
Friday & Saturday	23:00 hours to 02:00 hours

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 agreed that the procedure for the hearing would not be varied. The Sub-Committee then decided to exclude the public from that

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part of the meeting 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.

Prior to the hearing that Sub-Committee had considered the Licensing Officers report which included a copy of the application as submitted. The report also included written representations received from West Yorkshire Police, Leeds City Council Environmental Health Services, Wood Lane Neighbourhood Residents Association and Ash Road Area Residents' Association.

The Sub-Committee then went on to consider the application.

The Hearing

The following interested parties attended the hearing:

- Sgt. Pickersgill, West Yorkshire Police.
- Mr. Bob Patterson, West Yorkshire Police.
- Roger Halliwell, Leeds City Council Environmental Health Services
- Robin Parkes, Leeds City Council Environmental Health Services

In determining the application the Sub-Committee took into account the written submissions from the responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the parties prior to the hearing. Members also took into consideration some additional information which had been submitted by West Yorkshire Police prior to the hearing which contained crime statistics for the Headingley area. The Members of the Sub-Committee were made aware that the applicant was not in attendance and that steps had been taken in order to contact them to confirm their attendance. Members were also advised that the applicant had been sent both notice of the hearing and a copy of the agenda in advance of the meeting. The Sub-Committee resolved to determine the application in the absence of the applicant on the basis of the written information submitted by the applicant.

After considering the evidence and submissions the Sub-Committee would need to satisfy itself that granting the application would promote the licensing objectives.

In reaching its 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 & 18 of the Act because these were the most relevant to the application and Chapter 2 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 sections of the Licensing Policy as the Sub-Committee took the view that these paragraphs had a bearing on the application:

- Section 6 General Principles
- Section 7 Cumulative Impact Policies
- Section 12 Promotion of the Licensing Objectives

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Responsible Authorities

West Yorkshire Police

The Sub-Committee first heard from Mr. Bob Patterson, West Yorkshire Police, who spoke briefly before Sgt. Pickersgill outlined the representations on behalf of the police. Mr. Patterson informed Members that the representations which had been made by the police were made based on Leeds City Council's own Licensing Policy in relation to the Cumulative Impact Policy (CIP) in place in the Headingley area. Members were urged to give maximum consideration to the Council's policies when making their decision and that the representations were not directly concerned with the problems at the premises but with the problems which were experienced in the area. In providing a background to the area Mr. Patterson informed Members that previous to the current legislation many local residents had attended the Magistrates Court to object to such applications, mostly in relation to alcohol licences. There was a problem with fast food outlets also. Mr. Patterson added that there was a direct link between problems in the area, crime and disorder, anti-social behaviour (mostly alcohol related) and the fast food takeaways.

The representations which had been made by the police reflected and quoted what was contained in the Council's own Licensing Policy and guidance issued to Local Authorities. Sgt. Pickersgill informed Members that Otley Road was positioned in a residential area which continually suffered the effects of violent crime, drunkenness and anti-social behaviour. Traditionally central Headingley area had contained the majority of the late night refreshment houses in the area. Many people were attracted into the area, from places such as the city centre, due to the provision of late night refreshment. Offences had occurred in close proximity to the premises although they had not occurred inside the premises.

Due to the problems experienced and after consultation Leeds City Council felt that a CIP was appropriate. Leeds City Council's Statement of Licensing Policy made specific reference to takeaways in the CIP for the Headingley area. The Guidance issued to Local Authorities stated in paragraph 13.29 that the effect of adopting a special policy (i.e. the CIP) was to create a rebuttable presumption that applications for a new premises licence will normally be refused unless the applicant could demonstrate in their operating schedule that there would be no negative cumulative impact on one or more of the licensing objectives. Sgt. Pickersgill indicated that she felt that this had not been demonstrated in the applicant's operating schedule. There was a high concentration of Late Night Refreshment premises in the area so much so that the area was almost at saturation point. From speaking to the applicant Sgt. Pickersgill was aware that they had estimated 70% of the business would be from takeaways.

Leeds City council Environment Health Services

The Sub-Committee considered next the representations made by Mr. Roger Halliwell, Environmental Health Services (EHS). Mr. Halliwell explained that EHS had made representations in relation to this application due to its proximity to other residential properties. One issue which he had been trying to resolve was the previous history of the premises. In 2006 a planning application had been made to extend the flue and install a proper acoustic system. However, officers were not aware whether any work had taken place on the building's infrastructure which would especially effect those living above the premises. Mr. Halliwell added that an increase in the hours of operation would mean an increase of noise until later in the night time when background noise levels were lower than during the

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day time. If Members were minded to grant the application then they should consider conditions to minimise the noise nuisance.

The following issues were addressed in questions:

- The premises was currently vacant.
- There were at least two residential flats above the shop however Mr. Halliwell had not visited these flats so could not be sure.
- Other residents on Otley Road were some distance away, there was a small residential unit nearby but that was also near a busy road and would be more affected by other noise and would be used to a higher level of noise.

The Decision

The Sub-Committee discussed the application in a closed session. Members noted the written submissions objecting to the variation. The representations made by the applicant in the operating schedule in support of the application were also taken into consideration by the Sub-Committee.

The Sub-Committee heard from the licensing officer that notification of the hearing was given to the applicant on the 24th December 2008. The Sub-Committee also heard from the committee clerk that an Agenda had been sent to the applicant on 30th December 2008. The Sub-Committee were satisfied that the applicant should have known of the hearing and resolved to determine the application in the applicant's absence on the basis of the written application received.

The Sub-Committee considered the application for a premises licence and the written and oral evidence of the West Yorkshire Police and the Council's Environmental Health Department and the written representations of members of the public. They were not persuaded by the application that they could be satisfied that granting a new premises licence would not add to the impact already being experienced and therefore the application for a premises licence is refused.

In making its decision the Sub-Committee was satisfied that the decision to refuse the grant of the premises licence was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

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 £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

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Yours sincerely

Laura Pilgrim
Governance Services Officer