

When calling or telephoning please ask for

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My ref

JC/EVB

5 March 2010

To the Chair and Members

of the

LICENSING SUB-COMMITTEE

Dear Sir/Madam

A meeting of the **LICENSING SUB-COMMITTEE** will be held in the **COUNCIL CHAMBER, CIVIC OFFICES, MERRIAL STREET, NEWCASTLE** on **WEDNESDAY, 17 MARCH 2010** at **10am**.

### **A G E N D A**

Details of the procedure to be followed by the Sub-Committee together with Guidance Notes relating to Human Rights Act 1988 are attached.

1. To consider the report of your Officers on items requiring decisions.

Yours faithfully

**P W CLISBY**

Head of Central Services

## **GUIDANCE NOTES**

### **HUMAN RIGHTS ACT 1998**

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

### **Rights and Freedoms to be considered when determining matters**

#### **ARTICLE 6: RIGHT TO A FAIR TRIAL**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **ARTICLE 10: FREEDOM OF EXPRESSION**

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

#### ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

## **PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE**

### **NOTE:**

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

### **PROCEDURE:**

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair will then normally call upon the interested party or the responsible authority which has made the application for a review to provide evidence in support of their application.
4. The holder of the premises licence will then have the opportunity to question that party or responsible authority.
5. Members of the Sub-Committee will then have the opportunity to question that party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The holder of the premises licence will then have an opportunity to question that person.
8. Members of the Sub-Committee will have the opportunity to question that witness.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The holder of the premises licence will then have the opportunity to give evidence in response to the application and in response to the relevant representations which have been made.
11. The applicant, interested party or responsible authority will then have an opportunity to question the holder of the premises licence.

12. Members of the Sub-Committee will then have the opportunity to question the holder of the premises licence.
13. Stages 10 to 12 will be repeated for any witness on behalf of the holder of the premises licence.
14. The applicant will have the right to address the Sub-Committee in summing up his case.
15. The holder of the premises licence will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will make their determination at the conclusion of the hearing.

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO THE  
LICENSING SUB-COMMITTEE**

**17 March 2010**

1. **APPLICATION FOR A PREMISE LICENCE IN RESPECT OF  
'FLAMES' 37 LIVERPOOL ROAD, KIDSGROVE**

1. **Details of Application**

- |                                      |                                                                                    |
|--------------------------------------|------------------------------------------------------------------------------------|
| (a) <u>Applicant</u>                 | Yener Solak                                                                        |
| (b) <u>Premises</u>                  | 'Flames' 37 Liverpool Road,<br>Kidsgrove.                                          |
| (c) <u>Application for</u>           | Late night refreshments<br>House Licence                                           |
| (d) <u>Licensable activity hours</u> | 23.00 to midnight<br>Sunday to Wednesday<br>23.00 to 01.00<br>Thursday to Saturday |
| (e) <u>Location</u>                  | The Premises are situated in an area<br>that is both retail and residential.       |

2. **Application**

The Application is for a premise licence under 2.17 of the Licensing Act 2003 to permit the sale of hot food to takeaway on

|                      |                   |
|----------------------|-------------------|
| Sunday to Wednesday  | 23.00 to midnight |
| Thursday to Saturday | 23.00 to 01.00    |

3. **Steps proposed by applicant to promote the licensing objectives in respect of the  
variation application**

(a) **General**

The shop is manned at all times by 4 adult male persons. It has not suffered disturbance in the past. Any necessary or desirable training scheme will be undertaken.

(b) **The Prevention of Crime and Disorder**

Personal management with 3 male staff, adult members of staff. Also employed 1 delivery driver in regular attendance.

(c) Public Safety

Personal management with 3 male staff, adult members of staff. Also employed 1 delivery driver in regular attendance.

(d) The Prevention of Public Nuisance

Personal management with 3 male staff, adult members of staff. Also employed 1 delivery driver in regular attendance.

(e) The Protection of Children From Harm

Personal management with 3 male staff, adult members of staff. Also employed 1 delivery driver in regular attendance.

3. **Consultation**

The responsible authorities have been notified of the application. The applicant has advertised the application as required, by way of a poster on the premises and an advertisement in the local paper. The following representations have been received.

(a) Interested Parties

There has been 1 objection from an Interested Parties. This is attached (pink paper).

(b) Responsible Authorities

A representation has been received from the Development Control Manager – Regeneration and Development. This is attached (fawn paper).

4. **Policy Considerations**

(a) Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) The prevention of crime and disorder.
- (ii) Public safety.
- (iii) The prevention of public nuisance.
- (iv) The protection of children from harm.

(b) Policy Statement

The Licensing Act 2003 required the Council to publish a 'Statement of Licensing Policy' that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:-

- (i) Paragraph 2.9 – Trading Hours
- (ii) Paragraph 2.15 and 4.1 Public Safety
- (iii) Paragraph 4.4 Prevention of Crime and Disorder
- (iv) Paragraph 4.2 Public Nuisance

(c) Statutory Guidance

- (i) National guidance regarding the control areas outside the premises is laid down in paragraph 2.4 and 13.17; and
- (ii) National guidance regarding licensing hours is laid out in paragraphs 13.40 and 13.41.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.

5. Comments

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider necessary for the promotion of the licensing objectives as set out in paragraph 5(a) above:-

- (a) Grant the application as requested; or
- (b) Reject or amend the application.

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.