

LICENSING SUB-COMMITTEE 2

FRIDAY 24 AUGUST 2007 AT 2.00 pm

PRESENT: Councillors Boaden, Mrs Farmer and Tootle

ALSO

PRESENT: Councillor Morton attended part of the meeting as an observer

LSC2.01/07 APPOINTMENT OF CHAIRMAN FOR THE MEETING

RESOLVED – That Councillor Boaden be appointed as Chairman of Licensing Sub-Committee 2 for the meeting.

Councillor Boaden thereupon took the Chair.

LSC2.02/07 WELCOME AND INTRODUCTIONS

The Chairman welcomed all those present to the meeting and introduced Members of the Sub-Committee and Officers.

LSC2.03/07 DECLARATIONS OF INTEREST

Councillor Boaden declared a personal interest in accordance with the Council's Code of Conduct because he knew Mr Speirs (a former Officer of the City Council) and Mr Ion (a former work colleague of his).

LSC2.04/07 APPLICATION TO VARY A PREMISES LICENCE – FANTAILS RESTAURANT, THE GREEN, WETHERAL

The Licensing Officer presented report LDS.64/07 regarding an application for a variation to a Premises Licence for Fantails Restaurant, The Green, Wetheral.

In addition to the Council's Licensing Officer, Principal Solicitor and Committee Clerk, the following people attended the meeting and took part in proceedings:

Applicant:

Mr Kenneth E Hogg

Mr Peter Fulton on behalf of the Applicant

Interested Party Representations:

Mr Peter Cowen

Mr Simon Plevin

Mr Peter Andrews
Mr John Morris

Responsible Authorities:
Mr Jeff Downey

The Principal Solicitor outlined the procedure for the meeting.

There were no applications under Regulation 8(2) for other persons to speak at the meeting.

The Licensing Officer reported that an application for the variation of the Premises Licence for Fantails Restaurant, Wetheral had been received from Mr K E Hogg.

The variation included the removal of a number of embedded conditions inherited on conversion from the Justices Licence, as well as replacing former Public Entertainment Licence conditions with new ones outlined in the operating schedule.

The variation also included an extension of the opening hours as follows:

Late night refreshment	Sunday – Saturday New Years Eve	11pm until 2am Through to start of permitted hours next day
Sale of Alcohol	Sunday – Saturday New Years Eve	10am until 2am Through to start of permitted hours next day
Premises open to Public	Sunday – Saturday New Years Eve	10am until 3am Through to start of permitted hours next day
Regulated Entertainment	(Will remain the same as current Licence)	

Referring to the issue of advertising, the Licensing Officer advised that a member of the public had reported that the application was not visible outside the premises. He had attended Fantails and established that the notice had fallen off the wall on the Sunday, but had been replaced by a member of staff on the Monday. The consultation period had therefore been extended by four days.

The Licensing Officer advised that representations had been received from 15 residents living in the vicinity.

The Licensing Officer then outlined the relevant sections of the Council's Licensing Policy which had a bearing on the application and should be taken into consideration when making a decision. He also outlined the relevant National Guidance and reminded Members that the application must be considered, with regard given to the representations made and the evidence given before them.

Mr Fulton, on behalf of Mr Hogg (Applicant), then addressed the Sub-Committee in support of the application, highlighting the following:

- The application submitted was as detailed, with the exception of the opening time which was 8am and not 10am
- Mr Fulton was representing Mr Hogg because he had written the application submitted on his behalf and had been involved in submission of the application for Justices Licence conversion in 2005. He had known Mr Hogg for some 20 years and had a good idea of how he worked and operated.
- Mr Hogg had been licensee for the past 12 years, was highly respected amongst local licensees in the area and worked very hard to comply with legislation.
- Mr Fulton suggested that a major aspect revolved around Mr Hogg's experience and ability to run Fantails in the correct manner. Mr Hogg had very good control which could be difficult to achieve.
- The tabled notice of application looked awful and it was appreciated that Members may conclude that the hours requested were unacceptable. However the Licensing Act gave freedom to make the application.
- Mr Hogg was not proposing to remain open until 3am 7 days a week or to sell food/alcohol that late every day. It had been necessary to apply for more than would be used, but that did not constitute a 'back door' attempt to turn Fantails into a night club.
- The application comprised two parts, namely –
 - (i) Under the embedded conditions it was not possible to consume alcohol unless taking food. Over the years the licence had been developed in line with legislation and this was the latest in a series of applications to adapt the licence to suit 21st century needs.

70% of business related to food, with only 30% relating to drink. Filling Fantails with drinkers would detract from patrons wishing to eat and there was no wish to ruin the restaurant aspect of the business.

Removal of the embedded conditions would enable persons to pop in and buy a drink, but did not constitute a change of use. The Wheatsheaf Inn was now closed as was The Killoran leaving only one licensed premises within Wetheral and the application was designed to help Mr Hogg keep his business open.

- (ii) 15 letters of objection had been submitted and Mr Fulton asked that the Sub-Committee read carefully the terms of the incidents outlined therein. It was accepted that all objections were relevant in terms of the closeness to the premises.

There were a considerable number of properties from which no objection had been received. It had not been realised that supporters had to write in within the consultation period. Verbal indications of support had been received.

No objection had been received from the Police or Environmental Health. That did not mean that they supported the application, but showed they had no concerns.

Attention was drawn to the content of a letter dated 27 June 2007 from Mr Downey, District Environmental Health Officer (copies of which were tabled at the meeting) which stated that his department had not received any complaint of noise nuisances concerned with Fantails since summer 2004. Therefore the controls put in place by Mr Hogg were working.

Mr Hogg had taken additional steps, including the installation of CCTV and a booking system which doubled as a log book. In addition, the Licensing Department had undertaken a number of visits which had not identified any problems as far as they were aware. Mr Hogg worked very hard and the facts/evidence suggested that he did a very good job.

Bookings for 18th/21st birthday parties were not accepted, nor were requests for fireworks as part of his endeavours to keep problems to an absolute minimum.

There was no extension to regulated entertainment and the extended hours applied for were not seen as a catalyst for hundreds of people coming to the premises.

Traffic problems were in existence everywhere. The application was unlikely to result in an increase in drink driving. People had to make a choice as to whether they would drink and drive. Coaches were put on to minimise traffic, although there would be resultant engine noise.

It was not possible to say that no-one leaving the premises would create noise, but some noise came from other places and private parties. The new legislation regarding smoking made no difference because Fantails had been a no smoking establishment for the past two years. A "Challenge 21" policy was in place whereby anyone under the age of 21 years had to provide proof of their age.

- Mr Fulton then tabled copies of conditions proposed by Mr Hogg as a possible way forward and to deal with the objections to the application.

The Chairman indicated that neither the Sub-Committee nor interested parties had had sight of the proposed conditions. Accordingly Mr Fulton was requested to read out the conditions, following which there would be a short adjournment so that the various parties could consider the same.

Mr Fulton read out the proposed conditions, namely –

“Grant the removal of current restrictions – these are already adequately controlled within the Licensing Objectives.

Grant permission to sell alcohol from 10am – there are no objections to this starting time.

Grant permission to sell alcohol until 1am instead of the 2am applied for. This was offered previously by Mr Hogg at the informal meeting held in an attempt to resolve this situation.

To allow on 25 occasions per year the permission to extend the sale of alcohol until 2am. Details of this extended use will be kept in a log book which will be available for inspection at the premises.

To support the above times, the garden will not be used after 11pm. Smokers will be allowed to use the area at the front of the premises. This use will be visually controlled by Mr Hogg or a member of his staff and people will be monitored in terms of noise nuisance.

There will continue to be a sign at all exits to the premises requesting patrons to consider the peace of neighbours.”

The meeting adjourned at 2.32 pm and reconvened at 2.40 pm.

The Chairman indicated that the meeting would resume with questions to the applicant.

In response to questions, Mr Fulton said that the application was now for the sale of alcohol until 1am with a drinking up period thereafter.

In response to questions, Mr Hogg advised that the CCTV covered the car park as well as inside the premises. There were facilities to enable people to sit down and dine and weddings were held on fifteen occasions per year. People liked to have a drink after 12 midnight and an extension to 1am would assist with that aspect.

The request to extend the sale of alcohol until 2am on 25 occasions per year was not for weddings, rather it was to enable customers to stay late and have a drink.

Mr Fulton added that there was no intention to offer weddings until 2am. Mr Hogg further responded that coaches were arranged by party organisers.

Referring to the 25 occasions requested per year, the Licensing Officer said that normally provision was included that the licensee would notify the Police in advance. He asked whether Mr Hogg was willing to do that and the mechanisms by which a record would be kept.

In response Mr Fulton explained that he was not willing to include a provision that he would notify the Police in advance. The aim was to gain an element of flexibility and imposition of such a condition would defeat the purpose. Mr Hogg would keep a written record of those occasions when he went past 1am.

In response to questions and requests for clarification as to how such an ad hoc arrangement would work in practice, Mr Fulton said that Mr Hogg would make a judgement based upon his twenty years experience in the trade. Stopping people drinking could sometimes cause difficulty. 1am was sufficient the majority of the time, but there were occasions when it would be beneficial to continue until 2am.

By way of clarification Mr Cowen advised that The Wheatsheaf would reopen and only one of interested parties had received the letter from Charlotte Johnston informing neighbours that they would be holding a 21st birthday party on the evening of 18 August at Eden Mount and that there would be noise due to a band playing.

Mr Simon Plevin then spoke to the Sub-Committee on behalf of Peter Cowen, Peter Andrews, John Morris and the other interested parties, commenting that:

- They had suffered in silence for a long time as a result of some of Fantails' uses which was why there were twenty five letters of objection.
- Generally there was a fair degree of support in the village for Fantails. It was a good restaurant, centrally located and picturesque. Mr Plevin had used Fantails himself in the past and there was not a campaign against it.
- Their concern was that 30% of the business was now alcohol sales.
- There were two areas of complaint:

Use of outside areas at night and on weekends could prevent people enjoying their gardens. Over the years there had been a gradual move towards Fantails being a popular party venue and Mr Plevin quoted from the Fantails website. When operating as a restaurant it was professionally run and there were no problems. The issue was around the sale of alcohol late into the evening and the removal of the

embedded conditions which are seen as protection against residents being exploited.

The parking area was small. Parking and noise cropped up time and time again in relevant Licensing Policy.

When people went into party mode the issue was around the hours when alcohol was served and when people left the premises. The playing of background music was replaced by loud disco music which caused problems. The main issue was noise.

- The objectors asked that:
 - (i) the embedded conditions be not removed
 - (ii) strengthening of conditions if possible but, if not, they be applied and enforced
 - (iii) restriction on use of garden – 11pm was too late
 - (iv) consideration be given to restriction on use of garden at weekends
 - (v) current hours were sufficient and should not be extended
 - (vi) music should be restricted to background levels only
- The premises licence extended beyond the lifetime of the current licence holder and Mr Plevin asked that the Sub-Committee protect people from what was already a problem and could be an ever increasing problem.

Mr John Morris then set out his objections to the application, highlighting that:

- It was not disputed that Mr Hogg was a “good bloke”, but the point was that the premises got the licence.
- The Committee should not be deceived into believing that locals would want a pint at 2am.
- The fact that there were no complaints did not mean that there was no problem. People did not wish to cause trouble and would put up with noise at 12 midnight, but not at 3am. Beyond 11pm all that would go on was drinking.
- The best protection for a licensee whose customers wanted another drink was his licence.
- There was no public transport and no proper parking provision. The application would result in an increase in disturbance from noise.

Mr Peter Cowen then addressed the Sub-Committee, stating that:

- The approach by a Licensing Authority should be one of prevention.
- He had lived in the village since 1975 and before the Act came in he regularly telephoned the Police and Licensing Authority and nothing was done. The Sub-Committee should bear that in mind.
- Noise from Fantails could be heard in his bungalow.

In response to questions, the Principal Solicitor clarified the position regarding the potential to vary the licence in future and the Sub-Committee's powers in dealing with the current application.

In response to questions, Mr Plevin clarified that Fantails caused minimal disruption when operating specifically as a restaurant ie there was a public nuisance caused by noise when it operated other than a restaurant.

In response to questions Mr Cowan and Mr Morris confirmed the locations of their properties in relation to Fantails.

In response to a question from Mr Hogg as to why he had booked Fantails for 140 people on his 40th birthday , Mr Plevin said that was some time ago, he was not aware of the terms of the Licence; and the party broke up at 12 midnight at which time people dispersed quietly.

In response to a request from the Chairman, Mr Downey outlined the background to and content of his letter dated 27 June 2007 addressed to Mr Hogg, commenting that:

- As a statutory consultee he had looked at the past history of the premises and complaints substantiated. The department had not received any complaint of noise nuisance concerning Fantails since summer 2004 and therefore, to his knowledge, the premises had been operating since that time without complaint. That was why he had raised no objections to the application.

It would, however, have been remiss of him not to say that this would be a good opportunity to reinforce existing public nuisance-related licence conditions and consider the potential noise impact of smoke-free legislation. Mr Downey had on 26 June 2007 contacted Mr Hogg to reiterate the importance of effective control of potential noise sources at Fantails including the three regulations contained within his letter of 27 June 2007. He had received verbal commitments from Mr Hogg in that regard. The issue of noise and its effective management within and outside the Fantails premises was also further discussed with Mr Hogg during Mr Downey's scheduled inspection of the premises on 14 August 2007.

- Mr Downey was aware of the concerns of interested parties and advised that the Department had its own powers to deal with statutory nuisance.

In response to a question from the Principal Solicitor as to whether any complaints had arisen in the period from June 2007 to date, Mr Downey said that two complaints had been received via e-mail on 20 August 2007 regarding nuisance issues alleged to be coming from Fantails on 11 and 18/19 August 2007. He had investigated and spoken to Mr Hogg. There was music emanating from the premises; noise from people getting on and off buses; noise of the bus itself; and people messing about on The Green. Mr Hogg had confirmed that there was a party on that evening with a bus from

Brampton, but he was unaware of any inappropriate activities on the Village Green.

There was also a private party. Mr Downey had spoken to the owner of that property who had confirmed that music ran until 3am on 19 August 2007. That person felt that by giving the residents most likely to be affected prior notice of the party that was reasonable. A Police Officer attended the party around 3am and there was no significant entertainment noise at that time, only the alarm from an adjacent business property.

In addition, a complaint was received in relation to music noise from a leaving party at The Wheatsheaf. The same Police Officer attended at 12.45pm and confirmed that significant noise was emanating from that property which required his intervention. He did not notice any inappropriate activity at Fantails whilst passing by. It was, however, important to note that he was not there to investigate Fantails.

Mr Morris expressed his disappointment that it had taken a chance question from the Principal Solicitor to bring to light complaints received subsequent to Mr Downey's letter of 27 June 2007.

The various parties were then given the opportunity to sum up.

Mr Cowen asked that the Council should apply its policies, taking account of the points raised by Mr Plevin. He further requested that the embedded conditions be not removed nor the hours extended, and sought a condition that all music played should be background only.

Mr Hogg stated that the playing of music went with food and weddings and was a large part of his business. He had done all that he could and complied with the Police and Fire Services for years.

Mr Fulton added that there was no intention to turn Fantails into a party venue. Fantails would remain a restaurant and the removal of embedded conditions would not alter that. There had never been any intention to cause upset.

The Licensing Officer then outlined the various options open to the Sub-Committee in determining the application.

At 3.30 pm all parties, with the exception of the Sub-Committee Members, the Principal Solicitor and the Committee Clerk, withdrew from the meeting whilst the Sub-Committee gave detailed consideration to the matter.

The parties returned at 4.16 pm to hear the Sub-Committee's decision which was as follows:-

This matter concerned an application by Kenneth Eric Hogg of Holly Cottage, The Green, Wetheral to vary the conditions attached to the Premises Licence at premises known as Fantails, Wetheral, Carlisle and to extend the hours in which the Premises can carry out certain licensable activities.

The Sub-Committee had considered the application and taken into account the evidence before it. In particular it had listened to the submissions made by:

1. Peter Fulton on behalf of the Applicant
2. Kenneth Hogg
3. Peter Cowen
4. Simon Plevin
5. Peter Andrews
6. John Morris
7. Jeff Downey

Full consideration was given to the letters of objection and to those people who spoke at the meeting. It was decided that all the interested parties did live in the vicinity of the premises. The Sub-Committee noted that no representations were made by any Responsible Authorities.

After careful consideration the Sub-Committee had decided that the application be granted but subject to conditions consistent with the Applicant's operating schedule and the following conditions:

1. PPN1: The licensed premises may be open to the public between the hours of 8.00am and 1.00am from Sunday to Thursday and 8.00am and 1.30am on Friday and Saturday.
2. PPN2: The licensable activities namely the provision of late night refreshment and the sale of alcohol are permitted to take place on the licensed premises between the hours of 11.00pm and 12.00 midnight from Sunday to Thursday and 11.00pm and 12.30am on Friday and Saturday as regards the provision of late night refreshment and 10.00am and 12.00 midnight from Sunday to Thursday and 10.00am and 12.30am on Friday and Saturday as regards the sale of alcohol.
3. The rear garden at the licensed premises shall not be open to the public after 10.30pm.

The Sub-Committee gave the following reasons for its decision:

1. The Sub-Committee were of the opinion that the terms of the application were contrary to one of the licensing objectives, in particular, the Sub-Committee were of the opinion that it was not conducive to the prevention of public nuisance.

2. The Sub-Committee heard what Mr Hogg had to say and appreciated that there were occasions when it would be desirable to serve alcohol to persons other than those eating a meal.
3. The Sub-Committee gave due weight to the representations by the interested parties and agreed that the application, if granted in the terms applied for, would potentially increase public nuisance. In particular, it was noted that the Premises were located in a residential village environment and there had been incidents of disturbance from noise from the premises previously. There was limited public transport available.
4. The Sub-Committee had had regard to the Licensing Policy, in particular paragraphs 4.2.2, 4.2.3, 4.5.5, 4.5.7, 4.5.9, 4.5.10 and 4.5.11 and Guidance issued under Section 182 and was of the view that the additional conditions imposed were reasonable, proportionate and necessary to enable the application to be granted while furthering the Licensing Objectives, in particular the prevention of public nuisance.

The decision would be confirmed in writing and that would include details of the right of appeal.

(The meeting ended at 4.22 pm)